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**Public service broadcasting in transition: The example of West Germany**

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PUBLIC SERVICE BROADCASTING IN TRANSITION:

THE EXAMPLE OF WEST GERMANY

submitted by Jeanette Helga Peasey

for the degree of PhD

of the University of Bath

1989

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## ABSTRACT

This study charts the transition of West German public service broadcasting from its recent position of monopoly to its new status within a "dual system" of public service and commercial broadcasting. The political developments which have led to a dual system are analysed, and in this connection the conclusion of an inter-Land agreement on the reorganisation of broadcasting in 1987 is discussed. Emphasis is also placed on the pronouncements of the Federal Constitutional Court in November 1986 and March 1987, which set new parameters for public service broadcasting, as exemplified in the constitutional obligation of *Grundversorgung*.

The reactions of public service broadcasters to commercial competition are examined by concentrating on recent TV reforms and attempts to expand into cable, satellite and sub-regional broadcasting. In both cases the underlying goal is to establish the extent to which public service broadcasters can respond to the commercial challenge by drawing on their own resources.

The study shows that public service broadcasting's response to commercial competition is inhibited by a complex procedure of *Länder* policy-making and by the politicisation of issues affecting the funding of public service broadcasting. It also contends that formal structures and programming reforms are an inadequate defence if there is decreasing political willingness to support the system. The extent of this support is measured by political willingness to guarantee adequate sources of funding. The preservation of public service broadcasting is therefore closely linked to decisions taken by those outside broadcasting. However, the study concludes that continued adherence to balanced programming will help ARD and ZDF to stand out from commercial channels, and that more attention to high quality entertainment will increase audience loyalty, so making it more difficult for party-political forces to dismantle the system wholesale.

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## CHAPTER ONE

### INTRODUCTION

This study aims to chart the transition of West German public service broadcasting from its recent position of monopoly to its new status within a "dual" system of public service and commercial broadcasting. Of course, the introduction of commercial broadcasting in competition with public service broadcasting is not confined to West Germany alone. In the United Kingdom the public service British Broadcasting Corporation (BBC) has competed with the privately owned ITV stations since 1954. However, by examining recent developments in West Germany we can learn something about the route which public service broadcasting is taking in an increasingly deregulated and competitive environment. West Germany has been chosen as a case study, because it provides a perfect example of a broadcasting system which until quite recently was insulated from commercial competition, and exhibited only minor forms of commercial activity in the form of partial funding by advertising and the use of programmes produced by or bought from outside sources.

This introductory chapter outlines the key definitions and factors associated with the debate about the future of public service broadcasting in a broader context, drawing mainly on examples from West Germany and the United Kingdom. First, there will be an attempt to define public service broadcasting with reference to its past and the expectations and obligations it has traditionally been expected to

fulfil. Second, there will be a discussion about recent changes in broadcasting which are affecting the traditional understanding of public service. This will focus on growing commercial tendencies which, accompanied by new developments in the field of cable and satellite broadcasting, allow a greater number of competing broadcasting outlets than had previously been possible.

Chapter 2 deals specifically with the history and structures of broadcasting in Germany. Initially, it was intended that a historical description of broadcasting in Germany would serve as a useful backdrop, but it soon became clear that the historical narrative was much more significant as a critical step towards the intended analysis of the transition of public service broadcasting in West Germany. For only by understanding events of the 1920s and 1930s can we fully comprehend broadcasting structures in today's West Germany. A description and analysis of contemporary broadcasting structures and legislation sets the scene for later discussion of the most recent developments in West German broadcasting.

Chapter 3 analyses the political developments which have led to a dual broadcasting system in West Germany. Attention is primarily focused on events dating from 1982, when a conservative coalition came to power in Bonn, instituting a technological policy of widespread cabling which has allowed the federal states, the *Länder*, to lay the legislative foundations of commercial broadcasting. A detailed analysis of *Länder* negotiations to establish a dual system by an inter-Land agreement is accompanied by an examination of the

Constitutional Court's role in setting new parameters for broadcasting within a dual system. However, attempts to introduce commercial broadcasting are not a recent development, and a short description of earlier attempts to break the public service monopoly underlines the historical continuity of the debate.

Having established the events which have led to a dual system, I shall look in Chapters 4 and 5 at how the West German public broadcasting organisations, ARD and ZDF, have reacted to the prospect of private competition. Chapter 4 considers changes to the profile of the main terrestrial television services, and the extent to which these have been influenced by the prospect of commercial competition. I decided to concentrate on television in this chapter because the terrestrial services of ARD and ZDF constitute the main weapon of the public broadcasters in the competitive battle with new commercial broadcasters. Chapter 5 examines the expansionary policies of public service broadcasting in the area of new technologies (cable and satellite broadcasting) and new services, specifically sub-regional radio. In both cases, the underlying goal is to establish the extent to which public service broadcasting can compete effectively with commercial broadcasting by drawing on its own creative resources.

Chapter 6 looks at the transition of public service broadcasting in terms of funding. Funding has always been a problematic issue, but the emergence of new commercial broadcasting stations has brought it to even greater prominence. Here, the problems of existing sources of funding, the licence fee and advertising, are examined in detail.

There is also a consideration of alternative sources of funding and the extent to which these may offer a solution to existing problems.

In a sense Chapter 6 ties up previous chapters, because I have argued throughout that the absence of adequate funding inhibits internal reform and threatens not only the independence of public service broadcasting, but perhaps its very survival. Organisational structures and programming reforms are an inadequate means of ensuring future survival if there is decreasing political willingness to support the system, and the extent of this support is ultimately measured by political willingness to guarantee adequate sources of funding. The preservation of public service broadcasting is in fact dependent on those outside the broadcasting institutions rather than on any action taken by the broadcasters. Only as long as significant actors find their interests served by the public broadcasters, will the system remain secure regardless of whether it still manages to attract a significant proportion of the audience.

No single research method was adopted for the study, largely because of the exigencies of the situation. In addition to desk research, a year at the Institut für Publizistik at the University of Mainz allowed access to information which was not readily available in the United Kingdom. As well as historical documentation, substantial use was made of contemporary legislative material, broadcasting policy documents, press accounts, and analyses of events by various West German commentators.

Where written sources failed to give the required detail and insight into recent events, two further methods were employed. The first involved a number of personal interviews with various key players in broadcasting, drawn from both the public and private sector. The interviews were structured to the extent that the same basic themes were introduced, but questions were left purposefully open-ended to allow respondents to develop their own line of thought. There are difficulties in using this type of material in that respondent's accounts are often coloured by their own experiences and prejudices. However, themes and ideas do emerge which can be followed up and used to confirm or negate one's own explanations of events.

The second alternative research method was applied to Chapter 4, which sets out to look at possible changes in the television output of ARD and ZDF following the introduction of commercial television. Statistical analysis of television transmissions in a two-week period in October from 1982 to 1987 revealed the extent to which ARD and ZDF have altered their television schedules since the introduction of private television.

The nature of the study made it necessary to apply a cut-off point and the chronological section in Chapter 3 ends with the Federal Constitutional Court's decision, published in June 1987. However, some judgement was exercised in other chapters to extend this cut-off point beyond the end of 1987 into 1988, particularly where events and themes spilled over, and where it was felt that the extra information

would give the reader additional insight into the position in which West German broadcasters find themselves.

The questions posed and answered by this study of public service broadcasting in West Germany are as follows:

- what kinds of changes are taking place and how do these relate to public service broadcasting?
- what elements of continuity are still present?
- what are the terms of the political debate on broadcasting and who are the key players in this debate?
- how are the relevant authorities dealing with public service broadcasting in view of new technological developments and deregulation?
- what are the likely consequences of change in terms of public service broadcasting's programme content, scheduling policies and funding structures?

### 1.1 The concept of public service broadcasting

The first problem to be tackled is the definition of public service broadcasting. This question has to be broached because the transition experienced by public service broadcasting can only be fully understood by establishing the nature of public service. Yet public service broadcasting is not an easily definable or precise concept. On the one hand, there are the normative expectations of public service, ideas about how the system should ideally function. These

are usually couched in values associated with a Western-style democracy. As such the goals of public service are closely connected with the principles of diversity, pluralism, equality of access, and the maintenance of cultural identity. On the other hand, there is the practice of public service, which may or may not live up to these normative expectations.

The BBC, established in the 1920s, is still the classic prototype of public service broadcasting, and has served as a model for other European broadcasting institutions, including those in West Germany. It also acts as the original definitional source of public service. As such, a normative definition of public service broadcasting would probably encompass the following characteristics (see also Broadcasting Research Unit, 1985; Kuhn, 1985, p.4):

- independence of the state, commercial bodies, and other powerful institutions or individuals;
- public funding usually in the form of a licence fee, a type of tax paid by owners of reception sets;
- universal geographical availability;
- universality of appeal to both minorities and majorities of interest;
- varied and balanced schedules incorporating elements of entertainment, education, and information;
- an obligation to promote national culture and especially domestic programme production;

- an obligation to be impartial in the provision of news and information;
- public accountability.

These characteristics cannot be viewed in isolation. For example, the way a broadcasting organisation is funded often affects its independence of the state or of other organisations. Nor are these characteristics confined to public service broadcasting alone. For example, the British commercial broadcasting organisation, Independent Television (ITV), is funded solely from advertising revenues, but acts nevertheless in the public service tradition, because it is required to fulfil the same obligations as its more obvious public service counterpart, the BBC (see Negrine, 1985, p.15). Furthermore, commercial broadcasters, who are not legally required to adhere to the public service tradition, may also exhibit public service characteristics. In this respect Jean-Claude Burgelman refers to the US system, which transmits few imported programmes, offers minority broadcasting channels, and sustains an investigative tradition in news (Burgelman, 1986, p.180). From this, one might conclude that there is not much to distinguish between commercial and public service broadcasting apart from the profit-making incentive of the former. It could also be argued that public service broadcasters are moving closer to the commercial model in terms of programming policy, but there are still substantial differences between the two in terms of organisation, goals, and social obligations. As Wolfgang Hoffmann-Riem points out: "Die Kommerzialisierung ist - jedenfalls bisher -



nicht das bestimmende Element der Programmplanung und -durchführung im öffentlich-rechtlichen Rundfunk" (1984, p.38).

Independence has generally been secured by establishing public broadcasting institutions which although subject to the state in matters of overall organisation and finance, enjoy considerable autonomy in determining programming policy. Public broadcasting stations are self-administrating, and this autonomy is usually reinforced by an autonomous source of funding, normally in the form of a licence fee, which they are free, subject to general principles of good housekeeping, to spend as they see fit (see Lange, 1980, p.30, p.62). The licence fee usually constitutes the main source of funding. Consequently, the commercial pressures which might occur as a result of funding from advertising revenue, are minimised.

In liberal democracies, editorial autonomy, a consequence of institutional independence, is regarded as essential if broadcasting is to make a balanced contribution to public opinion and to act as a forum for debates and controversy (see Heller, 1978, p.22; von Hase, 1979, p.735; Lange, 1980, p.57). For only if editorial independence is guaranteed can the public make informed choices in a democracy. In this sense, public service broadcasting has a strong integrative role, revealing dissent in society and helping to create social consensus (see Lange, 1980, p.11). Like the press, broadcasting forms a link between those who govern, those who are governed, and those who want to communicate with the audience.

In theory, broadcasting independence is ensured; in West Germany it is even constitutionally guaranteed. However, the reality of autonomy is much more complex. Public service broadcasters do not operate within a power vacuum, and there are many points of contact both with the state and with other organisations. In fact, it could be argued that the official ideology of public service broadcasting tends to lay claim to a degree of independence not borne out by the realities of its position. Independence is strictly limited by the political constitution and consensus of a given society (see Hood, 1972, p.415). Some critics would go even further, arguing that the most powerful groups within society determine the world-view portrayed by the broadcasters (see Kopper, 1982, p.193).

Limits to independence are clearly visible when we compare the situation of public service broadcasters in the UK and in West Germany. In both countries the state plays an important role in choosing the members of broadcasting's supervisory bodies. In Britain, the Queen in Council, but in reality the government of the day, appoints the members of the BBC Board of Governors and the IBA (Independent Broadcasting Authority), the supervisory body of ITV (see Heller, 1978, p.31; Kuhn, 1985, p.6). In West Germany, central and regional governments are restricted as to the number of representatives they may nominate to the supervisory broadcasting committees, but their effective representation is bolstered by the presence of bureaucrats and political allies from other groups and institutions (see Hoffmann-Riem, 1979, p.155; Holzer, 1980, pp.59-60). In theory, the supervisory bodies are distanced from government, and

while exercising no executive control over content, they do act as trustees for the public interest by ensuring that broadcasters adhere to their charters or legislative guidelines. These powers and the method of appointment mean that the committees are by no means untouched by state influence.

In West Germany, the state is constitutionally forbidden from interfering directly in editorial policy (although this may of course occur indirectly through Länder representation in the broadcasting supervisory bodies), but this is not the case in Britain. Here, the Home Secretary, the cabinet minister responsible for broadcasting policy, can ask the BBC or ITV to refrain from broadcasting any programme (see Hood, 1972, p.408). This is an ultimate sanction which has never been used, in spite of frequent government criticism of programming, for example over the BBC's coverage of the Falklands conflict or of the troubles in Northern Ireland (see Burgelman, 1986, p.175; Siune, 1986, p.48). The fact that the ban has never been applied, does not bear testimony to the independence of broadcasting, because the existence of the threat may of course discipline the broadcasters into avoiding anything which might result in a ban (see Negrine, 1985, pp.29-30). If this is the case, editorial autonomy is curtailed not because programmes are banned, but because certain programmes never see the light of day. Furthermore, the British government is well aware of its powers, having recently banned the transmission of interviews with Sinn Fein, the political wing of the IRA. The British Government also has the power to suspend the licences of the BBC and ITV at any time and take over broadcasting

operations (see Heller, 1978, p.9). Such action, too, has never been taken, but it was certainly considered for the BBC at the time of the General Strike in 1926 (see Hood, 1972, pp.414-415; Tracey, 1977).

In almost all countries, funding constitutes the weakest link in the independence argument, impinging as it does on the principle of editorial independence. The timing and level of licence-fee increases are usually decided by governments and/or parliaments. As a result, public service broadcasters are particularly vulnerable to financial and political pressure when the licence fee is due to be raised (see Hood, 1972, p.411; Holzer, 1980, p.72pp; Lange, 1980, p.65). This problem has become worse since the almost universal ownership of TV sets, necessitating more frequent increases at a time when public service broadcasters are facing competition from "free" commercial broadcasting (see Kuhn, 1985, p.8). Nor are financial pressures confined to the licence fee alone. If, as is the case in West Germany, public broadcasting is also funded by advertising revenue, there may be a strong tendency to promote certain types of programming in order to attract advertising support.

Independence is also limited by what is deemed to be socially and morally acceptable within society. For example, most public broadcasting organisations are subject to wide-ranging rules and regulations on taste and decency, obscenity, slander, and copyright. Many of these restrictions, such as the ban on pornography, are generally felt to be acceptable and are justified in terms of the public interest. However, little is known about who determines what

is in good taste and what the public feeling is in respect of these matters (see Hood, 1972, p.407).

Licence-fee funding has already been mentioned as one of the constituents of public service broadcasting's independence. However, the licence fee also has another role. It allows the whole service to be funded, rather than individual programmes, regardless of whether these programmes are made for a majority or for minorities (see Lange, 1980, p.32; Broadcasting Research Unit, 1985, p.4). Unlike pay television, there is no connection between the price paid and the amount consumed, and in theory the public broadcasters as non-profit-making bodies do not have to let considerations of profitability influence their technical or editorial decisions (see Hood, 1972, p.413; Lange, 1980, p.30, p.64). Public broadcasters can literally afford to transmit minority programmes which a commercial company could not consider putting in its schedules. This is especially the case for a monopoly institution such as the BBC before the introduction of ITV in 1955, which could afford to concentrate on highbrow, if not elitist and paternalistic programming regardless of audience preferences (see Kuhn, 1985, p.5).

Alternatively, it could be argued that advertising-funded broadcasting does not require the viewing/listening public to pay a licence fee at all. However, it should also be remembered that advertising-funded broadcasting calls all citizens, not just viewers and listeners to account, because the cost of broadcasting is indirectly covered by the cost of advertising incorporated into goods

and services. What is more, public service broadcasters are not totally immune from commercially influenced decisions even if they are solely funded from licence fee revenues. They must still attract significant audiences to legitimate the licence fee, particularly if they are in competition with commercially funded broadcasting organisations. For example, the BBC is under pressure to attract audiences comparable to its rival ITV in order to sustain public support for the licence fee, and this has certainly influenced its programming policy.

Closely connected with the principle of universal equal payment for broadcasting services is the principle that public service broadcasting should be universally available regardless of where people may live (see Broadcasting Research Unit, 1985, p.1). Those who live in urban areas effectively subsidise the high technical cost of bringing broadcasting to remote areas. Everyone has the right to the same quality of service and the same number of broadcasting channels. This is in contrast to cable television, which is not universally available, because the high cost of the technical infrastructure confines cable to heavily populated, and therefore profitable areas (see Lange, 1980, pp.41-42).

Perhaps the most important aspect of public service broadcasting is that it should offer something which is of interest to all, in short universality of appeal (see Broadcasting Research Unit, 1985, p.3; Jenke, 1985, p.419). This obligation stems from the historical origins of broadcasting, when one institution often had to satisfy the

broadcasting needs of the whole nation. This does not mean that all programmes must satisfy all people simultaneously, but that programmes should be offered which appeal to both minorities and majorities of taste and interest at different times and over a reasonable timespan (see Broadcasting Research Unit, 1985, p.3). Closely allied with the commitment to provide something of interest to all, is the commitment to balanced schedules of diverse and wide-ranging programming incorporating elements of education, information, and entertainment, with no one element dominating the others. The advantages of such an approach are that people often encounter programmes which they would otherwise not experience (see Broadcasting Research Unit, 1985, p.3). This approach runs directly counter to the programming philosophies envisaged for cable and satellite television, where channels frequently concentrate on one programming strand such as films, popular entertainment, news, or sport.

Universality of appeal also implies that special provision should be made for cultural and ethnic minorities (see Broadcasting Research Unit, 1985, p.5). This recognises the fact that minority views are an important factor in opinion formation in democracies, and that access for minorities allows the possibility for them to achieve majority status (see Hoffmann-Riem, 1979, p.157; Lange, 1980, p.58).

Alternatively, one might argue that far from offering a valuable and important contribution to culture and education, public service broadcasters only offer something which has been defined by the

ruling classes or the elite (see Burgelman, 1986, pp.179-180). The main difficulty appears to be the definition of culture in broad terms, because public broadcasting's obligations in this area are only a rough outline which has to be filled with life by the broadcasters. Some have argued that provision for minorities has only been achieved after substantial pressure, and that in some areas non-established viewpoints and "minorities" such as women or blacks are still under-represented (see Burgelman, 1986, p.179). Others have observed that there is little diversity on public channels, and that there is little to distinguish public service broadcasting from its overtly populist commercial counterparts, particularly in a situation where private and public broadcasters are involved in intense competition for viewers, and sometimes for advertising revenue as well (see Hood, 1972; Murdoch & Golding, 1977).

Public service broadcasting is also seen as having a special relationship in respect of the national interest, culture, and community (see Broadcasting Research Unit, 1985, p.7; Lange, 1980, p.59). Although independent of the state, it is essentially political, because it is closely linked with the public sphere, providing a forum of social interaction where public opinion is formed and mobilised by a reasoning public (see Broadcasting Research Unit, 1985, p.7). This close connection with the concept of the nation-state is reflected in the provision of national news and coverage of important national events (see Lange, 1980, pp.55-56). It is also reflected in the impetus normally given to domestic production, although the effectiveness of this tends to vary from country to country. For



example the larger European countries tend to produce more than the smaller Benelux and less populous Nordic countries, which are more heavily dependent, for reasons of cost and lack of production capacity, on imported programmes (see Kuhn, 1985, p.8; Burgelman, 1986, p.180; Rolland/Østbye, 1986, p.116).

The obligation to observe impartiality in news and information is a further essential component of public service broadcasting, but attracts the most criticism either at a structural/societal level, because the system is seen to serve the interests of the most powerful within society, or in terms of individual cases such as the BBC's coverage of Northern Ireland and West German broadcasting's coverage of the nuclear energy issue (see Hood, 1972, pp.414pp; Glasgow University Media Group, 1976, 1980; Holzer, 1980; Barsig, 1981). The controversy surrounding impartiality arises because of the assumed importance of broadcasting in influencing the decisions people make about politics, particularly since television has emerged as one of the key elements in the process of political communication. Research into effects is not conclusive in this area, with researchers divided between those who believe that the media are very powerful (see Noelle-Neumann, 1973, p.67pp; Noelle-Neumann, 1982), and those who believe that the media are only one influence among many (see Katz/Lazarsfeld, 1955).

Yet the extent to which public broadcasters can be impartial is limited. In the UK, broadcasters are required to give due impartiality, with the emphasis very much on the word "due". For

example, broadcasters cannot be impartial about the proponents of racism, because this is not acceptable in British society. Public service broadcasting is regarded as a national institution and the constitutional creation of parliament. Consequently, the broadcasters cannot be impartial about the maintenance and dissolution of a nation; nor can they be impartial about things which parliament has made illegal (see Negrine, 1985, p.30). The role of the BBC in this respect was summed up by John Reith, the first director-general of the BBC, who described the Corporation as "an institution within the Constitution" (cit. in Tracey, 1977, p.151). This is also the case in West Germany, where broadcasters are obliged to adhere to the constitution, the Basic Law, which forbids them from giving a platform to those who do not accept the principles it enshrines. Impartiality is therefore a concept with limitations. As Hood points out:

Impartiality is impartiality within bounds and is applied to those parties and organizations which occupy the middle ground of politics; where impartiality breaks down is when the news deals with political activities or industrial action which are seen as being a breach of the conventions of the consensus. (Hood, 1972, p.418; see also Negrine, 1985, pp.30-1)

Impartiality is subject to strains not only when broadcasters are dealing with political activities or industrial action outside the middle ground of consensus. Problems can also occur with the emergence of new political parties. For example, the establishment of the SDP in the UK upset the idea of two-party politics, and made it more difficult for the broadcasters to claim that they were being impartial (see Kuhn, 1985, p.11; Negrine, 1985, p.22). The emergence of new political groups, for example ecologists and anti-nuclear groups which cut across traditional party political boundaries, also threaten

to undermine the traditional understanding of impartiality. Difficulties can also occur at times of national crisis, for example the Falklands War or the handling of terrorism in West Germany, when the broadcaster as a national institution is expected to carry the government line (see Jenke, 1985, p.418; Negrine, 1985, p.36).

Public broadcasting's claims to detachment and disinterest in the context of controversy therefore rest uneasily next to a commitment to the existing social and political order. While parliamentary forms of political activity fit easily into their coverage, extra-parliamentary forms of activity are regarded as illegitimate, and a threat to parliamentary democracy. The lack of coverage given over to these viewpoints leads to charges of neglect by those groups whose access to broadcasting is restricted or whose concerns are seen to be portrayed in a negative way. As society becomes increasingly more dissected and ideologically polarised, traditional views of balance, impartiality, and objectivity appear inadequate, precisely because they exclude or marginalise those outside the central boundaries of political argument (Negrine, 1985, p.23).

Although theoretically autonomous, public service broadcasting is also publicly accountable (see Lange, 1980, pp.62-3). Accountability is important, particularly in the case of public service monopolies, where the audience has no direct influence on programming and where revenues are not directly related to the size of the audience. In most cases accountability is achieved by the appointment of supervisory bodies such as the BBC Board of Governors or the *Rundfunkräte*,

broadcasting councils, in West Germany. Such is the complexity of society today that not everyone can have direct access to broadcasting, and the committees act on the public's behalf in the public interest. In Britain the membership of these committees is determined by government using a list of independent personalities, the "great and the good"; in West Germany the committees are supposed to reflect the pluralist nature of society.

However, some would argue that there is very little real public representation and only token accountability, and that access to broadcasting is limited to a narrow range of groups and institutions, usually the most powerful (Hood, 1972, p.422, p.427; Garnham, 1973; Heller, 1978; Holzer, 1980, pp.61-62). According to Holzer, referring to the West German situation: "Im Kapitalismus sind die gesellschaftlichen Kräfte 'relevant', die die herrschenden Prinzipien dieser Gesellschaft - Kapitalverwertung und Profitproduktion - auf ihrer Seite haben" (Holzer, 1980, p.62). Those groups who do not fit into the political mainstream, for example Communists, are excluded (see Hood, 1972, p.422). The problems of access and accountability are further compounded by the authoritarian structure of public service broadcasting and by professional ideologies which may be inherently elitist and undemocratic (see Hood, 1972, p.427pp).

Given the discrepancies outlined between theory and practice, one might conclude that there is no great difference between public service broadcasting and commercial broadcasting. In Britain there is certainly little to distinguish between the programme output of the

BBC and ITV, but ITV is essentially a regulated form of commercialism in the public service tradition. This is not always the case in other countries. However, even if public service broadcasting functions as a monopoly institution, it cannot operate in isolation from the market, because it is an industry producing programmes often according to commercial imperatives. These imperatives include the predominance of the managerial spirit, similar working conditions to the private sector, the importance of productivity, and cost-accounting (see Hood, 1972, p.406, p.411; Burns, 1977; Holzer, 1980, p.17). In commercial television the success of individual programmes is measured by audience ratings which attract advertisers. The relationship between audience ratings and advertising revenue is not so important for public broadcasters, but they still relate the size of the audience to the cash and resources required to make a programme, and this information influences programme schedules (see Hood, 1972, p.406; Tracey, 1977, p.240). Consequently, in spite of the assumed defects of public service broadcasting - its reflection of existing power structures and links with the commercial world - any far-reaching change in its nature and structure cannot be envisaged without a similar change in the nature and structure of the society which it serves.

The origins of public service broadcasting are historical and grounded on planned political and social considerations about the need to regulate a culturally and politically influential medium (see Hoffmann-Riem, 1984, p.32; Hoffmann-Riem, 1986, p.8). The American model of commercial broadcasting was rejected in the 1920s because

its unregulated nature led to technological chaos of the airwaves (see Heller, 1978, p.12; Rolland/Østbye, 1986, p.120). Scarcity of airwaves is often proposed as the reason for broadcasting monopolies, because they are a scarce national resource (see Hood, 1972, p.408; Rolland/Østbye, 1986, p.120), but both Garnham and Burgelman argue that there were certainly enough frequencies to create more than one broadcasting organisation in the United Kingdom and Belgium respectively (Garnham, 1983, p.13; Burgelman, 1986, p.186). Indeed, Channel 4, which was introduced in the United Kingdom in 1982, could have been made available in 1962. Both authors argue that the number of broadcasting organisations was limited for political, social, economic, and cultural reasons (Garnham, 1983, p.13; Burgelman, 1986, p.186). Essentially, monopolies offered the best way of controlling what was believed to be a most persuasive medium, broadcasting. There was also concern that radio could interfere with other types of communication, and the military is known to have been a proponent of one broadcasting organisation in the United Kingdom for fear of interference to its own communications (Heller, 1978, p.12).

When television was introduced in the 1950s, the idea of monopoly continued, because radio already provided an organisational model of public monopoly control. The post-war environment contained strong forces against commercialism, particularly as practised in the United States (see McQuail, 1986a, p.153; Rolland/Østbye, 1986, p.122), but the high costs of TV production and increasing pressure from business and advertising interests soon led to pressure for television to be supported by advertising. In Britain demands from commercial

interests were accompanied by political dissatisfaction with the output of the BBC, and the commercially funded ITV system was introduced in 1954. In West Germany, conservative political forces were equally dissatisfied with public broadcasting's output, but their alliance with commercial interests failed to bring about the introduction of commercial television until 1984.

With the exception of Britain, European public broadcasting has until quite recently been sheltered from the full extent of market forces as exemplified by commercial broadcasting. Public broadcasters have not been totally immune from the market, but under the concept of public service, programmes have not been treated primarily as economic goods (see Hoffmann-Riem, 1984, p.32). In return for this concession, public broadcasters have been expected to fulfil certain obligations, detailed above. Whether they are still obliged to fulfil these obligations in a competitive situation is another issue. In fact, whether their existence is still justified in such a situation is an issue which needs to be addressed.

## 1.2 Challenges to the status quo - increasing commercialisation

Public service broadcasting has never enjoyed the unequivocal support of society, but the last decade has seen a number of developments which have strengthened opposition to it. These developments are political, economic, and technological in origin, and are rapidly undermining the traditional notion of broadcasting as a highly regulated medium following society-led goals. Deregulation has

resulted in the introduction of commercially-run broadcasting stations in the vast majority of West European nations, and this is bringing a new set of problems for public service broadcasting. In contrast to previous periods of broadcasting history, the new developments are on a much larger scale and are being realised over a comparatively short timespan.

Advances in cable and satellite technologies have allowed an increase in broadcasting outlets, invalidating the argument that lack of frequencies prevents the introduction of further broadcasting stations. However, broadcasting is only one small part of a much larger telecommunications revolution. This involves a convergence of mass and individual communication with wide applications for business including databases, videoconferencing, teletext, home computing, electronic banking, office automisation, and so on (see Wolf Thomas, 1985, p.112; Burgelman, 1986, p.182).

According to Garnham, attempts to break the dominant position of public service broadcasting are part of a much broader international pattern. These attempts are determined by underlying economic trends and by the efforts of multi-nationals, often backed by nation states, to develop the market for so-called information goods and services as a new growth sector (1983, p.10; Burgelman, 1986, p.82). European governments are actively promoting the "information" society in order to protect national interests in the cultural and industrial sphere (see Hoffmann-Riem, 1984, p.35; Burgelman, 1986, p.181; Ferguson, 1986a, pp.55-56; McQuail, 1986, p.633). The implementation of new



technologies is seen as a means of remaining competitive in the face of strong competition from Japan and the United States, and of promoting new employment opportunities in the manufacturing and service sectors. Deregulation of broadcasting is regarded as one way of harnessing these technologies, but not just for the benefit of the viewer. It is also hoped that increased demand for broadcasting equipment will give a boost to the domestic electronics sector so as to replace declining heavy manufacturing industries (see Hoffmann-Riem, 1984, p.35; Miles/Gershuny, 1986, p.27; McQuail, 1986, p.633; Siune, Sorbets, Rolland, 1986, p.17pp). Even if they have doubts, many governments see no alternative to the promotion of privately funded entertainment services if the potential of the new media are to be realised (see Garnham, 1983, p.11; Negrine, 1985a, p.2; McQuail, 1986a, p.155).

Governments eager to encourage the new technologies have been encouraged by powerful industrial lobbies looking for new investment opportunities to replace saturated markets in traditional manufactured goods, and keen to acquire the lead in new international markets ahead of the Americans and the Japanese (see Garnham, 1983, pp.10-11; Hoffmann-Riem, 1984, pp.35-36; Hoffmann-Riem, 1986, pp.6-7; McQuail, 1986, p.633). Investment in the new technologies also offers a means of diversification for media conglomerates, particularly where anti-trust legislation acts as a barrier to expansion in core businesses. Multi-nationals are also driven by a need to improve their own communications facilities in an increasingly internationalised business world (Garnham, 1983, pp.10-11).

However, cable and satellite do little to alter the distributive nature of broadcasting itself, which remains a point-to-multipoint service. Cable and satellite are merely a new means of distributing an old medium (see Garnham, 1983, p.11; Negrine, 1985a, p.1). Nor is cable a recent technology, but increases in capacity have altered its status from that of a relay of terrestrial services in areas of poor reception to that of a potentially prime means of distribution for many additional broadcasting services (see Negrine, 1984; Negrine, 1985b, pp.103-4). What cable and satellite do offer is a way of circumventing the control of the broadcasting supply by public service broadcasters. They also provide a means of realising profit from what were previously thought of as publicly available goods by restricting access to those who pay extra for cable or satellite reception (see Burgelman, 1986, p.174; see Metcalfe, 1986, pp.37-51).

Technological change in itself, however, is not sufficient to explain the crisis in public service broadcasting. Independent of this, there must be widespread political dissatisfaction with the public system either because of its programming policies or for more ideological reasons (see McQuail, 1986a, p.170). Combined with the economic logic of the new media, political dissatisfaction with public service broadcasting is even more formidable, because the new media are the tools by which the dominant position of public service broadcasting will be broken.

For example, in West Germany the CDU/CSU political parties have long believed that elections are won through television, and that the

CDU has been unfairly portrayed by the public broadcasters, ARD and ZDF (Hoffmann-Riem, 1984, p.36). Following on from this, the CDU/CSU have pursued a two-pronged strategy for many years. On the one hand, they have tried to gain supremacy in the internal supervisory bodies of ARD and ZDF, while pursuing the objective of commercial broadcasting on the other. They believe not only that commercial broadcasters will reflect their viewpoints in a better light (see Hoffmann-Riem, 1984, p.36), but also that commercial broadcasting fits in with their preference for free-market principles and more choice for the viewer. Similar objectives can be observed in Britain's Conservative Party.

Perhaps more significant than the new technologies in altering the traditional understanding of broadcasting as a public service, are the commercial tendencies and deregulation which accompany them. The debate about more commercialised forms of broadcasting is not new, as shown by the existence of commercial broadcasting in the United Kingdom since 1954 and by the long history of attempts to introduce commercial broadcasting in West Germany. However, where previously public service broadcasting enjoyed considerable political support from all parts of the political spectrum, it is now increasingly only being tolerated by centre/right governments, and more surprisingly subjected to criticism from large sections of its traditional supporter base, the establishment and the left (see Garnham, 1983, p.21; Burgelman, 1986).

The drift towards more commercial forms of broadcasting is also governed by pragmatism about what is clearly happening within Europe. Cross-border satellite transmissions and video mean that there is increasingly less opportunity for governments to regulate what the public receives in terms of broadcasting output (see Elliot, 1982, p.252; McQuail, 1986a, p.164). Faced with the inevitability of commercialism from outside one's own borders, domestic forms of commercialism become more attractive by comparison (see McQuail, 1986a, p.164). A move towards commercialism in the domestic sphere is seen as a way of combating undesirable forms of commercial broadcasting from outside national boundaries which pose a threat to national culture and domestic advertising revenues (see McQuail, 1986a, pp.164-165).

Yet the concept of commercialism is just as difficult to define as the concept of public service broadcasting. Under closer examination different forms of commercialism are revealed, each carrying its own specific advantages and disadvantages. Given the breadth of definition, different choices are therefore open to policy-makers. At the most basic level, commercial merely implies something which is run in an economical, profitable and efficient way (see McQuail, 1986, p.634). Taken a step further, there are strong forms of commercialism and weaker forms which might be summarised as follows:

- a system wholly funded by private capital with little public supervision of content such as RTL in Luxembourg;

- a privately funded broadcasting organisation operating under a system of public regulation as part of a dual system of public service and commercial broadcasting such as ITV in the United Kingdom;
- the partial funding of public service broadcasting by advertising revenue, for example ARD and ZDF in West Germany;
- funding by subscription either on a per-programme basis (pay-per-view) or channel basis (pay-TV);
- the gradual dilution of standards on public service broadcasting in the interest of maximising audiences or of saving money as a result of competition or economic/political pressure;
- the use of private producers as a way of procuring either ready-made or commissioned low-cost programmes (see Holzer, 1980, p.70, p.103pp).

These different forms show that commercialism is not purely confined to what is traditionally thought of as commercial broadcasting, that is broadcasting which is privately owned, profit-making, and funded by advertising, sponsorship, or subscription. Several manifestations of commercialism are also applicable to public service broadcasting. Indeed, some researchers of the critical school have argued that there is no substantial difference between commercial broadcasting and public service broadcasting, because public service broadcasting works according to similar economic imperatives and reinforces existing power structures, which are in turn dominated by

capitalist forces (Murdock & Golding, 1977; Garnham, 1979; Holzer, 1980, p.17, p.61).

In spite of long-standing forms of commercialism, the concept is usually discussed negatively and emotionally in academic debate, because it serves as the embodiment of a system whose market principles stand directly opposed to the idealistic aims of public service broadcasting (see McQuail, 1986, pp.633-643; see also Silberman, 1969, p.15pp, p.21). According to Denis McQuail, these pejorative connotations of commercialism stem either from an idealist view of culture and communication as spiritual goods which should not be sullied by the market place or traded for profit, or from a political objection to capitalism and to the power of a business class whose strength might be reinforced by commercial control of the mass media (1986a, p.152). Whatever the ideological interpretation of commercialism, the practical constraints of commercialism are bound to lead to tensions. For each broadcast programme, unlike many other goods or services, is a unique creative effort, and this leads to tension between the needs of management efficiency and programme standards (see Hood, 1972, p.406).

Recent developments within Europe have brought the debate about commercialism to a new level. It is no longer simply a question of being for or against either commercialism or the non-profit motives implicit in the normative aims of public service broadcasting. The concept of commercialism, as shown, is too diverse and ambiguous to allow such a simplification. Commercial tendencies are now to be

found in public service broadcasting, as are elements of public service in commercial systems. Policy-makers, broadcasters, and academic commentators are therefore faced with a choice. They can either make a concerted effort to structure public broadcasting in such a way that commercialist tendencies are halted, or they can adapt and pick out those forms of commercialism which are beneficial to public service broadcasting, without losing the essential character of public service. Whatever they decide, they cannot ignore commercialism, because public broadcasting stations have to act within and cooperate with a market-led environment.

The need for a re-examination of past assumptions in the light of rapid technological and policy changes is particularly relevant to communications theory, which in the main has been opposed to commercialism. Denis McQuail suggests that this negative view of commercialism has placed theory in a rut, making it less able to respond adequately to the changes which are taking place around it (1986, pp.642). He argues that some compromise might be possible between theory and commercialism if theory took a more differentiated view of the process of commercialism, acknowledging some of the positive aspects of a more commercial approach to the production and distribution of programmes (1986, pp.643, p.636; see also Connell, 1983, pp.76-80). He points out that recent technological and social developments cannot be stopped by theory, and that a more differentiated approach to commercialism would allow theory to work out alternative solutions based on the goals of diversity and quality (1986, pp.641-642). Following on from this, theorists would have to

work out criteria to decide what types of communication can be properly left to the market (McQuail, 1986, p.643). The alternative to a more differentiated view of commercialism which acknowledges its contribution to popular culture is put more bluntly by Connell:

In general terms, there can only be one (alternative J.P) and that is to learn how to deal with the potential of things as they are and as they will soon become. Outside of this there is only irrelevance, something with which the left has become all too familiar. (1983, p.80)

Jean-Claude Burgelman comes to similar conclusions on leaving some aspects of broadcasting to commercial forces, but argues from a different theoretical standpoint to McQuail (1986). His conclusions are based on a critique of those who follow the tradition of critical theory (or the theory of political economy), but fail to follow it through. He accuses researchers in the critical tradition of adopting a very pro-public service stance now that public broadcasting is under threat, whereas they once argued that there was very little to differentiate between private and public broadcasting, because both were subject to the same structural pressures (see Burgelman, 1986, p.173). For example, in the past Nicholas Garnham stressed the relationship between broadcasting, the state and the establishment, and concluded that the principles of public service broadcasting were too constrained by an "essentially authoritarian, hierarchic and undemocratic" organisational structure (1973, p.37). Garnham's solution was to lessen state links with broadcasting and promote democratisation with more involvement of the public in the broadcasting process and a greater say in the day-to-running of broadcasting by broadcasting workers (Garnham, 1973, pp.41-46).



Murdock and Golding stressed the similarity between public service broadcasting and commercial broadcasting, because "as with any public corporation operating in a capitalist economy, the BBC behaves in many ways as though it were itself a commercial undertaking" (1977, p.21). The West German researcher Horst Holzer, combining a materialistic approach with empirical research, argued that the principles of public service broadcasting are constrained by the logic of commercialism, which turns them into an indirect tool of the state (1975; 1980, p.61):

Die Funkanstalten sind in dem, was sie materiell darstellen und kommunikativ-ideologisch tun, an die Hauptaufgabe des Staates im entfalteten Kapitalismus gebunden: an die rechtliche, ideologische und auch materielle Sicherung der kapitalistischen Verkehrs und Produktionsformen, an Formen, also, die die Unterwerfung der lebendigen Arbeit, der werktätigen Menschen unter das Kapital vermitteln. (Holzer, 1980, p.61)

In fact, before deregulation and privatisation became a reality, many researchers stressed public service broadcasting's dependence on commercial and political institutions. Now that public service broadcasting is under threat, they lay less stress on these arguments and argue in favour of the retention of public service broadcasting. For example, Garnham acknowledges the defects of public service broadcasting, but opposes the assumption that the market is superior to a regulated public service as a mode of cultural production and distribution (1983, p.14). He argues that the justification of public service broadcasting lies in its superiority to the market as a means of providing all citizens, regardless of wealth or geographical location, with equal access to high-quality entertainment, education, and information, so satisfying a range of tastes rather than just the most profitable (Garnham, 1983, pp.13-14). Garnham's solution is to

bring public service broadcasting back to its original ideals, which have been clouded by populism and undermined by bad management, leaving the BBC little more than a multi-media conglomerate (see Garnham, 1983, pp.20-25). In conjunction with this, he argues that the left should oppose the expansion of commercialism and new technologies in the interests of democracy and promote the expansion of public service broadcasting (Garnham, 1983, p.26). Garnham's opposition to all forms of commercialism is by no means unique (see Hoffmann-Riem, 1984; Holzer, 1985).

Burgelman, and also Connell, suggest that these critical researchers would do better to think of ways of improving public service broadcasting in practice, rather than just accepting that it is "better" than commercial broadcasting in theory, and arguing that it should therefore be protected unquestionably (Burgelman, 1986, pp.176-177; Connell, 1983, pp.70-71). Burgelman suggests a compromise whereby public service broadcasting would concentrate on the provision of information, local initiatives in radio, and innovative forms of entertainment, leaving commercial broadcasters to concentrate on popular entertainment, which they undertake much better anyway (1986, p.194-6). In order to achieve this, public service broadcasting would have to undergo structural reforms which would allow a greater spread of public representation (see Burgelman, 1986, p.196).

What, then, are the theoretical postulations which deal with commercialism? There are no theoretical statements which deal exclusively with commercialism, but some elements from discussions

about the relationship between communications and society offer a starting-point for discussion (see McQuail, 1986, p.635). These pose questions about who controls the media, who is being controlled, in what way, and with what effects. Pluralist, liberal-democratic views of the media place emphasis on the diffusion of power, and see the media as a means by which political institutions are held to account. Marxist views argue that power is concentrated among dominant groups in society, and see the media as a tool which legitimates the position of these dominant groups within society, reinforcing their non-accountability.

Traditional Marxist theory emphasises the structural effects of commercial media, which are seen as reinforcing support for the ruling capitalist class. It also stresses ideological and cultural effects which as a result of orientation to a mass market, rob the media of their critical potential (see McQuail, 1986, p.635; see also Adorno & Horkheimer, 1977, pp.349-383). Capitalist control is achieved either through direct ownership of the media or through ruling-class control of the state. Adorno, arguing from the viewpoint of cultural criticism, points to the standardisation and commercialisation which the modes of capitalist production impose on artistic expression, making it difficult to introduce anything new or innovative (1985).

The school of political economy takes Marxist cultural criticism and traditional Marxist theory one step further with empirical studies of the economic bases of production (see Golding & Murdoch, 1977, p.13ff; Garnham, 1979, pp.123-146). These emphasise the logic of

market forces and link structural effects, such as concentrated ownership and cross ownership, with cultural effects (see McQuail, 1986, p.635; Garnham, 1979, pp.124-125). Class stratification is seen as the root of inequality of access to the media, which in turn are controlled by a few organisations and individuals (Murdoch & Golding, 1977, p.13, p.15). As a result, class dominates the dissemination of ideas, and inequalities are maintained. Although economics is not seen as the sole determinant of media behaviour, economic control is seen as the most powerful of many levers, because concentration and cross-ownership entail an extension of ruling class control over the production and distribution of ideas (see Murdock & Golding, 1977, p.21, p.28; Garnham, 1979, p.130). In cultural terms this has two consequences: less diversity in programming and the exclusion of minority views, because only the most commercially successful programmes are shown (see Murdock/Golding, 1977, p.37).

Non-Marxist theory can also assume a critical view of commercialism, because an unregulated market can have undesirable effects by giving the public what it wants even if this is damaging or socially unacceptable, for example pornography (see McQuail, 1986, p.635). Without some kind of regulation, minority interests and tastes can be neglected because commercialism tends to intensify competition for large audiences (see McQuail, 1986a, p.152). This view of the media is often called the theory of social responsibility, and it has evolved from the experiences of an unregulated press and of a lack of broadcasting outlets comparable to the number of press outlets (see

Tracey, 1977, p.23). It places emphasis on impartiality, diversity, and accountability of the media.

Not all theories are opposed to commercialism. The theory of the free press, even when modified in terms of social responsibility, supports the idea that the market rather than the regulator is the best guarantee of independence, diversity, and choice (see McQuail, 1986, pp.635-6; see also Smith, 1980). With the advent of new cable and satellite outlets, this is a theory increasingly applied to broadcasting under the concept of electronic publishing (see Peter Jay, 1981). Press theory maintains that economic competition - assuming that there is both free access to newcomers and the absence of concentration - promotes journalistic competition and diversity, which reflects the plurality of society, so creating a free market place of ideas (see Tracey, 1977, pp.21-22; Lange, 1980, p.29). According to these views, commerce can be morally neutral, because market forces determine what will be transmitted rather than the political and moral judgements of self-appointed guardians (see McQuail, 1986a, p.155). Commercialism can increase quality and at a lower cost by making more funding available, and profitable operations are likely to be able to support high-cost services to small audiences, who may be profitable target audiences for advertisers (see McQuail, 1986a, p.155).

The theoretical positions outlined above help to define commercialism within the context of society. However, there are a number of general arguments against commercialism in broadcasting

which cut across theoretical or ideological allegiances. These arguments are outlined below.

Some argue that commercialism encourages concentrated ownership and cross-ownership, because the high costs of programme production can only be supported by large, wealthy organisations (see Lange, 1980, pp.78-79; Garnham, 1983, p.16; Wolf Thomas, 1985, p.121; McQuail, 1986a, p.153). Concentration and cross-ownership benefit those who by virtue of their economic power already have the greatest access to the media (see Murdock & Golding, 1977, p.37; see Garnham, 1983, p.15; Hoffmann-Riem, 1984, p.45).

In the interest of profit maximisation, commercial broadcasters are seen to pander to the interests of advertisers rather than to viewers (see Hoffmann-Riem, 1984, pp.44-45). A seminal work on commercial television economics states:

The first and most serious mistake that an analyst of the television industry can make is to assume that TV stations are in business to produce programmes. They are not. TV stations are in the business of producing audiences. These audiences or means of access to them are sold to advertisers. The product of a TV station is measured in dimensions of people and time. The price of the product is quoted in dollars per thousand viewers per minute of commercial time. (Owen et al, 1974, p.4)

Consequently, while public service broadcasting is supposed to have cultural goals and the production of programmes at its core, commercial broadcasting is believed to follow other aims - namely the earning of advertising revenue, profit maximation and the treatment of the audience as potential consumers. Programming is placed around advertising messages both in terms of themes, usually the most

popular, and in terms of when advertising breaks occur, usually at the most gripping moment of a transmission (see Kiefer, 1979, p.677; Lange, 1980, p.43; Hoffmann-Riem, 1984, p.46). According to Wolfgang Hoffmann-Riem, advertisers do not have to exercise direct influence on broadcasters, because everyone knows what type of programmes contribute to the commercial recipe for success (1984, p.46).

The pursuit of commercial goals is believed to result in less real choice for the audience. In the interest of maximising commercial revenue, the same types of programmes are shown, usually those which can be produced or acquired at low cost, but which attract the largest audiences, such as serials, quiz shows, and acquired programmes (see Murdock & Golding, 1977, p.37; see also Holzer, 1980, pp.120-22; Lange, 1980, p.44; Garnham, 1983, p.15). Broadcasters do not even have to show the best programmes, merely those which will attract the largest audiences and prevent viewers from switching to another channel (see Hoffmann-Riem, 1984, p.45).

Conflicts and controversies which could irritate the audience and reduce the efficiency of the advertising message are either avoided or pushed to the margins of the schedule (see Kiefer, 1979, p.677; Hoffmann-Riem, 1984, p.46). Even if serious topics are covered, they tend to be treated in a superficial way, because programme content should support the commercial message (see Hoffmann-Riem, 1984, p.46; Jenke, 1985, p.420).

Given the emphasis on the tried and tested formula of populist programming, commercial approaches to broadcasting are seen to result in a neglect of dissenting and minority cultural, racial, or political interests. First, the programming needs of these audiences are neglected because they are not sufficiently large and/or rich enough to attract attention from advertising interests (see Murdock and Golding, 1977, p.39; Lange, 1980a, p.139). Second, the views of such minorities may be incompatible with the image which commercial broadcasters wish to project to their majority audience. As Murdock and Golding point out:

In general, then, the determining context for production is always that of the market. In seeking to maximise this market, products must draw on the most widely legitimated central core values while rejecting the dissenting voice or the incompatible objection to a ruling myth. The need for easily understood, popular, formulated, undisturbing, assimilable fictional material is at once a commercial imperative and an aesthetic recipe. (1977, p.40)

If this is the case, then commercialism acts as a barrier to change, because it promotes social, political, and economic status quo (Hoffmann-Riem, 1979, p.153; Elliot, 1982, p.250). In this way the power of the existing ruling class is consolidated, because those who want change cannot publicise their dissent and lack the resources to communicate to a broad audience by alternative means (see Murdock & Golding, 1977, p.37).

Commercialism is also attacked for posing a threat to national culture. The need to maximise revenues results in pressure on costs. This works against domestic productions and expensive minority programming, and in favour of cheap imports, usually American in origin, or domestic imitations of cheap imports such as game-show



formats or serials ( see Elliot, 1982, pp.244-247; Hoffmann-Riem, 1984, p.33). Domestic producers cannot compete effectively with cheap US imports, because these have already achieved their profit targets in the huge US market for syndicated television (see Hoffmann-Riem, 1984, p.33). Moreover, when commercial revenues take a downturn, as was the case for ITV in the late 1960s, production budgets are one of the first items to be cut back (see Hood, 1972, p.412).

Unlike public broadcasting, which is universally available, commercial services are believed only to supply those areas where it is profitable to supply services first, usually densely populated urban areas (see Broadcasting Research Unit, 1985, p.2). This is particularly the case for cable television, where the high cost of installation means that it is unlikely to be made available in remote areas (see Wolf Thomas, 1985, p.124). Subscription as a form of funding can also affect universality. Unlike the licence fee, which guarantees everyone the same level and amount of service, pay television can disenfranchise those who are unable to pay. Consequently, while pay television offers the least threat to advertising-funded media, it threatens to nullify the public-good nature of information, because individuals are excluded on the basis of their willingness to pay (see Elliot, 1982, p.245, p.249; Metcalfe, 1986, p.45).

On a more general level commercialism, especially if it is allied with advertising, is criticised for addressing individuals as consumers driven by self-interest. This in turn leads to public

conservatism and conformity (McQuail, 1986a, p.154). Commercialism is:

equated with conscience-less encouragement of popular prejudice and the wish for easy, immediate gratification or worse (pornography, vicarious violence etc). In this version, it offends against the work ethic and ideals of social and moral improvement, which tend to favour values and ends such as: the public good over private pleasure; the freedom and creativity of the cultural/information producer; education, truth and social improvement; diversity of viewpoint and cultural expression; the national or regional language or culture. (McQuail, 1986a, p.154).

Commercialised production does not always result in bad or inferior products per se. The film industry, for instance, produces quality films in spite of being privately owned, and there are plenty of quality newspapers and magazines too (see Burgelman, 1986, p.185). As Burgelman points out, what is "good" or "bad" does not simply result from the way in which it is produced (1985, p.185). Perhaps, there has been too much effort into claiming that public service broadcasting is better because the public needs to be protected. This could be an elitist attitude, and it does not fully explain why public service broadcasting is better. Nor does it give any clue as to what might be better provided by commercial broadcasting organisations.

Given the assumed negative effects of commercialism on broadcasting generally, what are the assumed effects of commercialism on public service broadcasting in particular? On the one hand, you have to consider its position as a competitor to privately-owned commercial broadcasters. On the other, you have to consider the effects of commercial income such as advertising, sponsorship, or subscription on public broadcasters, as is the case in West Germany.

As pointed out earlier, some researchers argue that public service broadcasting is tainted by commercialism even if it is not subject to commercial competition. According to Horst Holzer, the technical and economic base of public service broadcasting is directly linked to commercial interests and to the movements of capital, and this puts pressure on public service broadcasters to become more commercially orientated in their approach (Holzer, 1980, p.76; see also Murdock & Golding, 1977).

In mixed systems where public service broadcasters compete with commercial broadcasters, competition can either force public service broadcasters to adopt a more commercial approach or force them into programme niches aimed at minority audiences (see Lange, 1980, p.72; Garnham, 1983, p.23; Hoffmann-Riem, 1984, p.48). The latter is not evident in Europe, but the Public Broadcasting System in the United States caters for niches which are not adequately served by the mainstream networks (see Kleinstauber/Müller, 1985). According to Kleinstauber/Müller, a system modelled on the US model of public broadcasting would only be an alternative in West Germany "wenn man dem öffentlich-rechtlichen System seine Existenz- und Weiterentwicklungsmöglichkeiten raubte und das System der Gebührenfinanzierung mit zusätzlichen Werbeeinnahmen zerstörte" (1985, p.406; see also Hoffmann-Riem, 1980, p.354). If the populist approach is adopted, commercial competition can upset the balance of public service broadcasting as it seeks to combine the contradictory goals of public service, which are society-originated goals, and the goals of mass consumer satisfaction. In this respect, commercial systems have

the upper hand because they have fewer programme obligations and can usually draw on larger financial resources (see Lange, 1980a, p.143).

Forced to compete with commercial broadcasters in order to maintain audience share and so justify licence-fee support, public service broadcasters can become little different from their commercial competitors (see Elliot, 1982, p.251). This type of commercialism may be the weakest form, but is also the most widespread. Self-commercialisation is an accusation frequently levelled at the BBC because of its pursuit of ratings (in order to justify the licence fee) and it has been seen to result in editorial and programme conformity (see Hood, 1972, p.411). It has been argued that if the BBC were consistently to have less than a 30% share of the audience (the case when ITV was first introduced) then its enemies would be in a position to urge its demise (see Hood, 1972, p.411; Negrine, 1985, p.19). In the event of consistently low audiences, the licence fee becomes more difficult to sustain as a means of public funding.

Competition with commercial broadcasters can also affect programme supply as public broadcasters stretch their finite financial resources (see Negrine, 1985, p.20). If several organisations compete for the same programmes, this can have an inflationary effect, forcing up the price of rights to acquired programmes and sporting events (see Hoffmann-Riem, 1984, p.48; Jenke, 1985, p.421; Wolf Thomas, 1985, p.121). In-house production can be affected, too, as public service broadcasters try to compete with the wages offered by their more affluent commercial rivals. This was the situation faced by the BBC

(von Hase, 1979, p.736). If wages in the public sector do not keep apace with those in the private sector, valuable and highly trained personnel can be lost (see Hoffmann-Riem, 1984, p.39, p.48). Lack of funding can result in increasing reliance on co-productions and independent productions, which bring economic, or rather commercial criteria into public service broadcasting (Hoffmann-Riem, 1984, p.39). Less emphasis on domestic production can also have implications for further licence fee awards (see Jenke, 1985, p.422).

The appearance of narrowcast channels such as those which concentrate on films or sport can also upset the balance of public service broadcasting. The prospect of many channels concentrating on different themes or types of content runs counter to the principle of public service broadcasting sandwiching programmes of minority appeal amongst more populist output (see Burgelman, 1986, p.184). One of the arguments in favour of public service broadcasting is that a balanced schedule allows viewers to come into contact with content which they would not normally encounter. If narrowcast channels became the norm, the public would be in a position to avoid such programmes of narrow appeal, by tuning in to more populist channels.

The situation is made worse if several broadcasters compete for revenue. For example, in West Germany public broadcasters are partially funded by advertising, and therefore have to compete with private broadcasters for this revenue. Already competition with new commercial TV stations for advertising revenue is leading to a more populist programming at the times when advertising is broadcast. In

Britain the principle of separate sources of funding for different channels was a long-held principle. This was because it was felt that if ITV and BBC were forced to compete for the same source of funding, there would be less choice in programming, as each sought to maximise their audiences with the same type of output (see Broadcasting Research Unit, 1985). Separate sources of funding represented a way of enhancing competition in programming rather than competition for revenues through concentration on the same types of programming. More recently this principle has been dropped to encourage new cable and satellite channels. According to Wolfgang Hoffmann-Riem, public service systems supported by advertising do alter their programmes to attract large audiences (see Hoffmann-Riem, 1984, p.39). This is not such a problem if they have a monopoly of advertising on television or radio, but the situation alters dramatically once commercial broadcasters begin to compete for a piece of the same advertising cake (see Hoffmann-Riem, 1984, p.39).

### 1.3 Review

As a matter of principle, the issue of commercialism has been resolved in most countries. The debate no longer revolves around whether commercialism should be allowed, but how and in what forms it should be introduced, and what should be done with public service broadcasting. This research attempts to establish the solutions developed in West Germany, and to identify the route taken by ARD and ZDF in coping with the prospect of commercial competition.

In what way, then, does commercialism in the form of more broadcasting outlets threaten public service broadcasting? An increase in commercialism threatens public service broadcasting's dominant or monopoly status and as such its claim on audiences and revenue. It also implies much more. It poses a threat to the public service ethos and offers the prospect of broadcasting becoming less socially accountable and less committed to the public interest. The public service broadcasters have two options. First, they can orientate their programme philosophy towards high standards. This poses the threat of being accused of elitism, or of degenerating into a "niche" broadcasting outlet for minority interests. Second, they can compete directly with commercial stations. This poses the threat of being accused of offering nothing substantially different. If public service broadcasting loses the ability to stand out from other broadcasting channels, it will forfeit a large part of the justification for its further existence, because its survival to the present day has ultimately been justified by the fulfilment of public service ideals in programming output.

## CHAPTER TWO

### PUBLIC SERVICE BROADCASTING IN WEST GERMANY

Any examination of West German public service broadcasting's role in a dual system would be incomplete without reference to its structures and to the ideas and events which shaped its early development. In this respect history is of prime importance. The experiences of the Weimar Republic and National Socialism not only serve to put recent post-war history into context, but also represent a constant reminder of a past which must never be repeated.

#### 2.1 From statist neutrality to party propaganda. Broadcasting in the Weimar Republic and under National Socialism

Broadcasting emerged as a result of several inventions at an international level, most of which were initially developed with other ends in mind (see Behrens, 1986, pp.106-11). As a process, its origins are social rather than technical, because the capacity to broadcast existed long before its potential as a form of mass communication was recognised (see R. Williams, 1974, p.25; Curran and Seton, 1985, p.125). As Bertolt Brecht rightly pointed out: "Nicht die Öffentlichkeit hatte auf den Rundfunk gewartet, sondern der Rundfunk wartete auf die Öffentlichkeit" (cit. in Bausch, 1973, p.299).

At the beginning of the century experiments were carried out in wireless telegraphy, as opposed to wireless telephony (voice



transmissions) with the Marconi Wireless Telegraphy and Signal Company playing a prominent role (Briggs, 1961, pp.25-31; Sandford, 1976, p.61). However, as distinct from broadcasting (i.e. the transmission of messages to an infinite number of receivers) these early experiments were used as a means of point-to-point communication, involving specific messages to specific receivers. The potential of reaching a wider public was not recognised at this stage (Briggs, 1961, p.5; Lerg, 1980, p.36). In both Britain and Germany, wireless communications were mainly used by the military, in shipping, and for the purpose of maintaining contacts with the colonies (Briggs, 1961, p.29; Lerg, 1965, p.25). The outbreak of the First World War in 1914 hastened the pace of technical innovation as wired communications with the outside world were severed (see Lerg, 1980, p.37; Curran and Seton, 1985, p.125). After hostilities ceased, more attention was focussed on the public possibilities of radio, those involved having been encouraged by the success of experimental transmissions carried out by both sides during the war (Sandford, 1976, p.62).

In post-war Germany the introduction of radio was hampered, as the new Weimar Republic embarked upon a period of political and economic upheaval. In the revolution of November 1918, former military wireless units were taken over by revolutionary committees, and demands were made to wrest the control of telegraphy from the post office authorities (Pohle, 1955, p.31). The Ministry of Posts regained control in January 1919, and the Post Office, the Reichspost, took over the army's central transmitting installation at Königs

Wusterhausen near Berlin on 1st February 1919 (Lerg, 1980, p.40). A wireless department was established at the Ministry of Posts under Hans Bredow, a former board member of the telecommunications firm, Telefunken (Lerg, 1980, p.40). Bredow is regarded as the father of German broadcasting (Lerg, 1965, p.119).

Having regained control, the Ministry of Posts, under Bredow's influence, set about taking the initiative on broadcasting. At Königs Wusterhausen links were established between Germany and the rest of Europe, and wireless telegraphy was used to relay news to regional post offices (Flottau, 1978, p.12). The news agencies, Wolfsches Telegraphenbüro and Hollandsch Niewsbureau, were allowed to relay reports to subscribers by wireless telegraphy from 1919 (Montag, 1978, p.20). Business news was transmitted by the Eildienst GmbH, a private company, owned by the state, and closely associated with the German Foreign Office (see Montag, 1978, p.21; Lerg, 1980, pp.53-59). In 1922 the Eildienst became the first organisation in Germany to introduce voice transmissions (Lerg, 1980, p.59). These experiments do not represent broadcasting in its established form, because there was no public reception. What they do reveal are two tendencies which had far-reaching consequences for the early development of broadcasting in Germany: the Reichspost owned and controlled the technical apparatus of transmission and left content nominally to third parties (Flottau, 1978, p.13). This gave the post office authorities influence not only on broadcasting technology, but also on programme content.

From the start the Ministry of Posts was intent on taking charge of radio. Its control over licensing was derived from the *Telegraphenregal* (1), a state monopoly of telegraphic communication, incorporated into Article 48 of the Imperial Constitution of 1871, and Article 88 of the Weimar Constitution (Flottau, 1978, p.13). In 1892 the state monopoly of telegraphic services was incorporated into a law which gave the state the sole right to erect and run telegraph-transmitting installations (see Lerg, 1980, p.30). In 1908 this was extended to all forms of wireless telegraphy (Lerg, 1980, p.30). The Ministry of Posts' jurisdiction over communications, allowed it to undertake measures to safeguard the state's ultimate jurisdiction over communications, without the necessity of introducing legislation (Pohle, 1955, p.33). These powers were to be used constantly as broadcasting became established.

Questions of state security were to play an important role in the organisation of broadcasting. First there was a desire to regulate broadcasting, in order to prevent the unregulated "Wellenchaos" which existed in the United States (see Lerg, 1965, p.123). Also, the proliferation of illegal reception by amateur enthusiasts reinforced the conviction that radical groups should not gain control of the new medium and so seek to undermine the shaky foundations of the new Republic (Lerg, 1980, p.72, p.93).

Although the Ministry of Posts controlled developments from an early stage, it had to resort to private funding, because the state had no funds to finance the introduction of broadcasting (Pohle, 1955,

p.44). This involved political considerations, because private interests had to be found which would offer no opposition to the state. Wolfgang Schütte writes:

Es nimmt deshalb nicht Wunder, daß die mit Rundfunk befaßte Reichsbehörde, das Reichspostministerium, die neue Entwicklung nur zu fördern gedachte, wenn sie das Reich kein Geld kosten würde. Als Geldgeber mußten politisch unverdächtige Leute gefunden werden, die sich aber staatlichem Reglement nicht widersetzen durften. Denn die Gefahr, daß der Rundfunk ohne strenge Aufsicht mißbraucht werden könnte, erschien zu groß. (cit. in Montag, 1978, p.23)

Attempts by the Reichspost to involve newspaper publishers and news agencies failed, because of squabbles amongst the press and a failure to recognise the potential of broadcasting, an oversight the press was to regret in later years (Lerg, 1980, pp.50-52). In January 1923, inspired by the example of the British Broadcasting Company (a private company established in 1923 by British radio manufacturers, and replaced in 1926 by the British Broadcasting Corporation, the BBC), the three most important German wireless manufacturers (Telefunken, Lorenz, and Huth) joined forces to apply for a licence to erect and run transmission installations (Lerg, 1980, p.77). Programmes would have been supplied by a private company, the Deutsche Stunde - Gesellschaft für drahtlose Belehrung und Unterhaltung GmbH. The manufacturers were working on the assumption, that they would be granted a monopoly in the market for receivers, similar to their British counterparts (see Pohle, 1955, p.34). This plan failed because of opposition from other manufacturers (Lerg, 1980, p.90). However, more importantly the Reichspost was reluctant to relinquish technical control to private interests (Lerg, 1980 p.73). In the end the Reichspost decided to build transmission facilities

itself, leaving programming to private initiatives (Montag, 1978, p.22).

On 22nd May 1922 the Deutsche Stunde, a private broadcasting company, was established in Berlin as a subsidiary of the Eildienst GmbH (Lerg, 1980, p.67). The Reichspost managed to secure the state's influence by obtaining 51% of the new company's voting shares, held in trust by one of the founders, Ludwig Voss, the managing director of the *Eildienst* (Montag, 1978, p.22). The first public broadcast by the Deutsche Stunde took place on 29th October 1923 from Berlin (Flottau, 1978, p.14). The first news bulletin was broadcast on 9th November 1923, and reported Hitler's abortive Munich putsch (Sandford, 1976, p.64).

In the run-up to the introduction of public broadcasts the transmission of news had become a source of conflict between the Ministry of Posts, responsible for telecommunications, and the Ministry of the Interior, responsible for security (Pohle, 1955, p.25). The unstable political situation had engendered strong doubts about broadcasting content, and in this context the Minister of the Interior was brought into the debate, because the Minister of Posts was unwilling to assume supervisory responsibility for political programmes (see Flottau, 1978, pp.17-18; Lerg, 1980, p.82). In May 1923, the Ministry of the Interior intervened, because it wanted more state control of content (Lerg, 1980, p.85). Officials at the Ministry of the Interior were keen to encourage "Reichs- und republikanische Staatsgedanken" (Pohle, 1955, p.36). The feasibility of this was

regarded sceptically by the Ministry of Posts which would have preferred more apolitical content (Lerg, 1980, p.91). Officials at the Ministry of the Interior centred their plans on the Aktiengesellschaft für Buch und Presse as a provider of news (later Drahtloser Dienst - Aktiengesellschaft für Buch und Presse, abbreviated to Dradrag). This company had been established in May 1923 by SPD politicians using money from the *Fonds zum Schutze der Republik* (Pohle, 1955, p.36). The Dradag was heavily influenced by the Ministry of the Interior, which held 51% of its shares (Montag, 1978, p.23).

Under pressure from the Ministry of the Interior, the Ministry of Posts concluded a contract with both the Deutsche Stunde and the Dradag on 24th November 1923 (see Flottau, 1978, p.17). The Dradag broadcast news and political programmes, leaving literary and musical content to the Deutsche Stunde. According to the Dradag contract, news and political programmes could only be broadcast with special permission. In the case of the Deutsche Stunde the Ministry of Posts reserved the right to install advisory committees to supervise literary and musical content (Flottau, 1978, p.17). In this way the state kept control over technical installations, and was given extensive powers over content.

Although the provision of programming was mainly the preserve of the Deutsche Stunde and Dradag, regionalism was an essential characteristic of German broadcasting. Originally the Deutsche Stunde had planned a national service, but this was neither technically feasible nor politically acceptable to the individual German states,

the *Länder* (Pohle, 1978, p.34). The regional structure of German broadcasting, which is still evident today, owes much to Hans Bredow, who recognised the cultural diversity of Germany. Hans Bausch writes:

Aus dieser technischen Notwendigkeit machte Bredow eine kulturpolitische Tugend, weil er erkannt hatte, daß ein von Berlin ausgestrahltes Einheitsprogramm den traditionellen deutschen Kulturlandschaften nicht zugemutet werden durfte. (Bausch, 1956, p.17)

Bredow concluded an unofficial agreement with the Deutsche Stunde, whereby the latter would organise the establishment of 9 regional, private broadcasting companies (*Vertrauliche Vereinbarung zwischen Dr. Bredow und E.L. Voss, dem Leiter der "Deutschen Stunde"*, in Fischer, 1957, p.76). Although these companies (2) were established by private interests, the state's influence was secured, because they were required to hand over 51% of their shares and a seat on the board each to the Ministry of the Interior, the Ministry of Posts and the Deutsche Stunde (Flottau, 1978, p.16). In January 1926 the regional stations were supplemented by the Deutsche Welle GmbH, which broadcast programmes to the whole country on longwave (Lerg, 1980, p.173). This was owned by the *Reich* and the *Land* of Prussia in a ratio of 70:30 (Lerg, 1980, p.173).

From 1925 there was a growing conviction at the Ministry of Posts that broadcasting had outgrown private initiative (Pohle, 1955, p.48). This was to prove an occasion for increased state control. In 1925 Bredow persuaded the regional companies to found an umbrella organisation, the *Reichsrundfunkgesellschaft* (RRG), to exercise uniform administrative, technical and financial control of broadcasting (Pohle, 1955, p.39; *Übereinkunft Bredow/RPM/Rundfunkgesellschaften 1925*, in

Fischer, 1957, p.77). The *Länder* protested that their jurisdiction over cultural matters was being usurped (Pohle, 1955, p.40). A compromise was reached which gave the *Länder* and the Ministry of the Interior control over programming; financial and technical control was exercised by the Reichspost (Lerg, 1980, p.194). The Reichspost took a 51% share in the RRG, and Hans Bredow was appointed *Rundfunkkommissar* for the RRG at the Ministry of Posts (Pohle, 1955, p.48, p.54). The Reichspost was able to secure further economic control by requiring that the regional companies hand over a 51% controlling interest in their concerns to the RRG (Flottau, 1978, p.19). Although the RRG was responsible for the coordination of administrative and financial affairs, it was increasingly drawn into programming questions (Pohle, 1955, p.55).

The *Länder* and the Ministry of the Interior brought their influence to bear in programme rules issued on 17th December 1926 (*Richtlinien für die Regelung des Rundfunks*, in Fischer, 1957, pp.79-81). News and topical programmes had to be "streng überparteilich" (p.79). The Dradag became the RRG's news department, and the regional stations were restricted as to which news items were obligatory, and which were optional (pp.79-80). Control of other political content, broadcast by the regional companies, was subjected to supervisory committees, *Überwachungsausschüsse*, composed of two representatives from the *Länder* and one from the Ministry of the Interior (p.80). Supervision of literary and musical content was to be undertaken by cultural committees, *Kulturbeiräte*, whose members were named by the



*Länder* in consultation with the Ministry of the Interior (p.81). Both types of committees could veto programmes (pp.80-81).

Although broadcasting was not officially an object of the state, state control was almost absolute. Moreover, the reforms of 1926 made it easier for the state finally to nationalise broadcasting in 1932. Heinz Pohle writes that nationalisation by a government without a majority: "beweist uns einmal mehr, wie weit bereits die tatsächliche Entwicklung staatlicher Einflußnahme auf dem Rundfunk, im Grunde verankert in den Rundfunkbestimmungen von 1926, fortgeschritten war" (1955, p.118).

Any vestige of independent broadcasting was erased. The 49% private share in the RRG was transferred to the *Länder* (Pohle, 1955, p.125). The private shares in the regional stations were redistributed between the *Länder* and the RRG in a ratio of 49 to 51 (Pohle, 1955, p.125). A second *Rundfunkkommissar*, Erich Scholz, was appointed from the Ministry of the Interior to supervise programmes and the neutrality of political content (Pohle, 1955, p.125). Bredow, the *Rundfunkkommissar* from the Ministry of Posts, was made responsible for broadcasting organisation, finance, and international relations (Pohle, 1955, p.125). Membership of the RRG administrative council was divided up between representatives from the two ministries and the *Länder*, and a programme committee was established with 15 members, appointed by the Minister of the Interior (Pohle, 1955, p.125). The *Dradag* was liquidated as a private company and became a news department within the RRG. The *überwachungsausschüsse* in each

of the regional stations were replaced by *Staatskommissare*. These were appointed by *Land* governments in consultation with the Ministry of the Interior (Pohle, 1955, p.125). In this way state control over programme content was increased. Economic and technical control had rested with the state since 1926. The reforms were justified by Erich Scholz, a member of the NSDAP, in a broadcast on 28th July 1932: "Für den Rundfunk . . . kann und darf es nur eine Lösung geben: nicht das Interesse dieser oder jener Partei, sondern das der Staatspolitik gibt in allen Fällen den Ausschlag" (cit. in Pohle, 1955, p.124).

From this account it is clear that the introduction of broadcasting was mainly determined by the Ministries of the Interior and Posts with little reference to parliament. This was in part conditioned by the unstable political situation, with many different groups jostling for power. Referring to the exclusion of parliament Pohle writes:

Eine solche Funktion gab es überhaupt gar nicht, denn darin waren sich sowohl Reichs- wie Landesvertreter einig: um die ohnehin schon schwierige Situation noch nicht weiter zu erschweren, mußte man den Reichstag aus allen Verhandlungen fernhalten, die das Verhältnis von Rundfunk und Staat betrafen und über die zukünftige Organisation des Rundfunks und seine öffentlich-rechtlichen Grundlagen entschieden. (Pohle, 1955, p.41)

In this respect Hans Bredow played an important part, because he was determined to avoid the political abuse of broadcasting by excluding parliaments from the policy-making process. Looking back, Bredow wrote: "In einer Zeit, in der die Parteipolitik das Leben vergiftete und alles drunter und drüber ging, hielt ich es für notwendig, den Rundfunk von Regierungen und politischen Parteien unabhängig zu machen" (cit. in Lerg, 1965, p.121). However, although

parliament was excluded from any decisions relating to broadcasting, it proved impossible to exclude state control, particularly over programme content and via partial ownership of the broadcasting companies (Flottau, 1978, p.21). Ultimately, control by the state became increasingly inseparable from political influence and abuse of broadcasting. The emphasis was placed on securing the state, rather than on securing democracy. This is explained partly by the political instability of the period, and partly by the underdeveloped understanding of democracy within Germany. Drawing comparisons with the pluralistic supervision of public broadcasting in West Germany, Heiko Flottau comments: "Die Kontrolle des Rundfunks durch 'gesellschaftlich relevante Gruppen' war damals unmöglich" (1978, p.21). In retrospect, German broadcasting in the 1920s could not be conditioned by freedom from the state, and freedom from censorship, because social and political conditions were completely different from those prevailing now. The effects of the medium were unknown, and there was concern that it should not destabilise the fragile foundations of the Weimar Republic (see Sandford, 1976, p.67).

The desire to keep parliamentary politics out of broadcasting policy was carried over into programming. The insistence on neutrality in news, cultural, and entertainment programmes may have been a serious error of judgement. It was not neutrality in the sense of diversity of opinion and the broadcasting of counterbalanced ideas, but rather neutrality through the exclusion of almost anything political. The cultural role of broadcasting was seen to be more important than its politically integrative or educational role. In a

speech Bredow stated that broadcasting should be used as a "Sprachrohr der deutschen Kultur, aber nicht des deutschen Bruderzwistes". He added: "Politische Kämpfe gehören in die Parlamente und die Presse, der Rundfunk soll ein Instrument der Kultur und des Ausgleiches, also ein Werkzeug des Friedens sein" (cit. in Pohle, 1955, p.61). As a result, debates about the future of the Weimar Republic were left to an increasingly hostile and right-wing press, a radicalised central Parliament, riots, and intimidation. Later there were some attempts to introduce a political element into broadcasting, with talks on political themes, but censorship and overcautiousness reduced their effectiveness and their percentage to insignificance (Pohle, 1955, pp.77pp). At the time there were calls for more attention to political issues, but as Pohle has pointed out the political situation, and perhaps the intolerance of the audience meant that such a change could never be a real possibility (1955, p.76).

The state-dominated broadcasting system finally lost any remaining independence when the National Socialists took power in 1933. Whereas Bredow had tried to keep politics out of broadcasting, the National Socialists recognised radio as a key instrument of their propaganda machine. Broadcasting was brought under the the control of the *Reichsministerium für Volksaufklärung und Propaganda*, and the broadcasting stations were purged. Any regionalism that had remained after 1932 was abolished, and control was centralised (Flottau, 1978, p.23). The RRG came under the direct control of the Propaganda Ministry, and the powers of the Reichspost were reduced. Broadcasting

output was not only severely censored, but adapted to fit National Socialist policies, including racial policies (Flottau, 1978, p.24). Political events had come full circle as the neutrality of broadcasting output in the Weimar Republic was transformed into a political tool of the National Socialists. The factors which had played a role in this transformation were taken into account when broadcasting was reorganised after the Second World War.

## 2.2 The origins of West German public service broadcasting. A relic of the occupation

The origins of public service broadcasting in that part of Germany which was to become the Federal Republic of Germany, are to be found in the period of Allied occupation after the Second World War (see Herrmann, 1975a, p.211). They are in fact historical, based on practicalities, not theoretical (Reichert, 1955, p.23). Although no uniform concept for broadcasting can be distinguished, the French, British, and American Allies had similar aims in mind (see Bausch, 1980, pp.18-19). Primary amongst these, was the belief that broadcasting must be independent from the state and other dominant influences. This is summed up in a written statement by the American military governor on 21st November 1947:

Es ist die grundsätzliche Politik der US-Militärregierung, daß die Kontrolle der öffentlichen Meinungsbildung, wie Presse und Rundfunk, verteilt werden soll und von jedem herrschenden Regierungseinfluß freigehalten werden muß. Im Rahmen dieser Politik sollen die Rundfunkorganisationen als der Allgemeinheit dienende Einrichtungen geschaffen werden, frei von der Herrschaft irgendeiner Gruppe mit Sonderinteressen, von staatlichen, wirtschaftlichen, religiösen oder irgendwelchen anderen Einzelementen der Gemeinschaft. (cit. in Flottau, 1978, p.25)

This belief in the independence of broadcasting was shaped by the experiences of National Socialism and by the mistakes of the Weimar period. Corporations of public law were established to strengthen the principle of broadcasting independence. These served the public interest, and were guided by the principles of impartiality, public accountability and diversity of opinion, principles which were reinforced by the establishment of institutionalised supervisory committees, composed of representatives drawn from different groups within West German society. In the words of Reich:

Das Besondere einer Anstalt des öffentlichen Rechts besteht darin, daß diese Anstalt keine Eigentümer hat. Eine Aktiengesellschaft gehört den Aktionären, ein Staatsbetrieb dem Staat; eine Anstalt des öffentlichen Rechts gehört juristisch niemandem. Deshalb hat niemand Anspruch auf Dividende oder sonstige Vorteile. Ausschließlich dem Nutzen der Allgemeinheit soll die Anstalt des öffentlichen Rechts und demzufolge auch die Arbeit des Rundfunks dienen. (Reich, 1963, p.382)

The influence of the BBC model is clearly visible, and as John Sandford points out, "to this day the Federal Republic's broadcasting corporations have more in common with the BBC than with any other broadcasting service" (1976, p.71). However, German experience also shows the difficulties of imposing a foreign model against strong internal opposition.

In 1945 the Allies were keen to use the media as a means of reeducation in the principles of democracy, humanity, and tolerance, in order to repair the intellectual, emotional, and moral exhaustion of German culture after years of National Socialist rule (see Tracey, 1983, p.23). Broadcasting passed completely into Allied hands, although control was gradually returned to the Germans, as had been

intended from the start (Mettler, 1975a, p.48; Herrmann, 1975a, p.211). In September 1949 the French, British, and American military governors were replaced by the Allied High Commission, which issued a law requiring Allied approval for any structural changes in the broadcasting system established by them (Bausch, 1980, p.240). The existence of this veto may have stopped some of the more ambitious plans of German politicians to alter the system to their advantage (see Bausch, 1980, p.160). Final jurisdiction over broadcasting remained with the Allies until 5th May 1955, when the Federal Republic of Germany gained full sovereignty. Hans Bausch writes that the Allies took four years to establish their ideas of broadcasting in a democracy, and a further six to see that the system they had introduced survived in its basic principles (1980, p.18).

The broadcasting stations founded by the Allies mirrored the division of Germany into zones of occupation. Decentralization is perhaps the only feature post-war West German broadcasting shares with the Weimar period, although centralist control in the form of a reconstituted Reichs-Rundfunk-Gesellschaft was deliberately avoided (Flottau, 1978, p.27). The repercussions of zonal division survive to this day, because broadcasting stations were established of greatly different size. The Americans established four stations in their zone of occupation: Bayerischer Rundfunk (BR), Hessischer Rundfunk (HR), Süddeutscher Rundfunk (SDR) and Radio Bremen (RB) (see Schütte, 1975, pp.227-230, p.232). This coincided with their own federal tradition and system of multiple broadcasting units, run in accordance with the principle: "Die Macht muß verteilt werden" (Bausch, Interview,

29.7.1987). The tiny station of RB, which serves only 150,000 people, owes its existence to the British concession of an American naval enclave in the north (Kapust, 1979, p.39). The French and the British, in common with their own centralised broadcasting systems, established single stations in their zones. The British founded NWDR (Nordwestdeutscher Rundfunk) by military ordinance in January 1948 (see Schütte, 1975, pp.226-27). NWDR was based in Hamburg and served 5 million listeners in North Rhine-Westphalia, Hamburg, Schleswig-Holstein, West Berlin, and Lower Saxony. The French established the Südwestfunk (SWF) by military decree in October 1948 (see Schütte, 1975, pp.230-231). This served the Rhineland-Palatinate and the former *Länder* of Baden and Württemberg-Hohenzollern. In 1952 the last two *Länder* were combined with the American occupied Land of Württemberg-Baden to form the new Land of Baden-Württemberg. This created an anomaly, because Baden-Württemberg was now served by two stations, SWF and SDR.

In terms of organisation, it was the British who provided the model of public service broadcasting. The Americans had wanted to introduce commercial broadcasting in their zone, in accordance with their own national experience (see Montag, 1978, p.33). This tallied with their concept both of independence from the state and of pluralism, where democracy and liberty are secured by economic competition (Mettler, 1975a, p.106). Financially this was not possible. According to Bausch: "Die Amerikaner hatten überhaupt keine Idee. Da es nichts zu essen gab in Deutschland, konnten sie auch den Rundfunk nicht kommerziell organisieren" (Bausch, Interview, 29.7.1987).



When the idea of private broadcasting proved Utopian the Americans opted for the British model of independent public corporations, in order to fulfil their concept of pluralism in at least a limited way. The French, too, rejected their own national experience of state-controlled broadcasting for a system of public service broadcasting. The British, alone, attempted to apply their own model (of the BBC) to German practice.

In an attempt to reinforce further the principle of broadcasting independence, the Allies reduced the powers of the postal authorities (see Bausch, 1980, pp.24-43). The Reichspost, which had been a source of state influence in the Weimar Republic, was forced to transfer its transmitters to the new broadcasting stations. Its powers were confined to licence fee collection, dealing with technical interference and licence fee evasion (Hoffmann, 1975, p.29).

#### 2.2.1 German opposition to Allied plans

Allied insistence on independent public service broadcasting, supervised by internal committees, composed of representatives from groups and institutions, was opposed by many West German politicians, who regarded the new system as a "Besatzungsdiktat" (see Jank, 1967, p.21; Bausch, 1980, p.19). They would have preferred a return to the state-dominated system of the Weimar Republic (Hoffmann, 1975, p.38; Bausch, 1980, pp.20-21). This showed an inability to understand the role of independent media in a democracy (see Lucius D. Clay, American military governor, cit. in Bausch, 1980, pp.22-23). However, in

contrast to Weimar, where parliament had been excluded, West German political representatives argued that control of broadcasting should rest with the *Länder* parliaments, who, unlike other groups, were the only legitimate elected representatives of the people (see Bausch, 1980, p.161). Politicians across the spectrum were suspicious of group representation and the concept of impartiality in broadcasting, because they believed these would only benefit group interests, rather than the public interest (see Hoffmann, 1975, p.39, p.33; Bausch, 1980, p.55). An SPD critic, writing about NWDR, commented:

Wir (the SPD) hatten. . . darauf hingewiesen, daß ein überparteiliches Institut, das sich gegen eine Mitarbeit der Parteien wehrt, einen politisch undurchsichtigen Körper darstellt, dergestalt, daß er Raum zu Angriffen, sei es gegen einzelne Parteien oder gegen die Parteien überhaupt, freiläßt. (cit. in Hoffmann, 1975, p.39)

It has been widely assumed that the experience of National Socialism made politicians fearful of the political effects of broadcasting (see Hoffmann, 1975, p.62). State control was seen as a corrective for the negative effects of broadcasting and fitted in with past practice. Referring to the Weimar Republic and West German politicians' reluctance to accept independent broadcasting, Klaus Berg writes:

Etwas aus der Staatskontrolle zu entlassen, erschien fast wie die Erteilung eines Freibriefes. Die staatliche Überwachung war in der Weimarer Republik gerade das Mittel gewesen, mit dem man Auswüchsen aller Art und auch dem vermeintlichen Übel der "Politisierung des Rundfunks" glauben zu begegnen zu können. (cit. in Bausch, 1980, p.82)

Allied determination to secure broadcasting's independence had varied results depending on how successful German opposition proved

to be. The Americans decided to give the Germans control earlier than the British, but took longer to achieve this, because of their insistence on satisfactory *Land* legislation to comply with the principle of independence from the state (see Montag, 1978, pp.34-35; Bausch, 1980, pp.65-127). For instance, the Americans rejected several drafts for an SDR law, because these gave the *Land* government too much influence (Bausch, 1980, p.93-105). Barbara Mettler shows how the Bavarian authorities got round the American insistence on broadcasting independence (1975b, p.245). The Americans had refused to accept executive representation in the pluralistic supervisory councils of BR, but they were prepared to accept parliamentary representation, drawing on their own experience of a separate legislature and executive (Mettler, 1975b, p.245). However, in Germany this distinction is not so clear, and so the Bavarian government was able to secure indirect influence in BR's supervisory councils (Mettler, 1975b, p.245). Mettler also sees the Bavarian success in opposing American demands for independent broadcasting as a result of an American restorative policy, which came to place less emphasis on eradicating National Socialism, and more emphasis on opposing Communism (Mettler, 1975a, p.7, p.10).

The British, too, had problems in convincing the Germans of the merits of independent broadcasting. The transferral of NWDR into German hands was entrusted to Hugh Greene, later Director-General of the BBC (see Tracey, 1984). Greene, in his own words, believed that "das Statut der unabhängigen BBC mit erforderlichen und vernünftigen Modifikationen den deutschen Verhältnissen angepaßt werden könnte".

(Greene, 1970, p.54) Greene was determined not to submit to party political demands for "demokratische Kontrolle" in the form of *Überwachungsausschüsse*, with representation from the party organisations (Greene, 1970, p.54). However, he was keen to involve the Germans in discussions about NWDR's future legal status (Greene, 1970, p.54).

The political parties managed to water down Greene's proposals for NWDR to facilitate the dominance of party political and state interests (Hoffmann, 1975, p.41). The 16-member *Hauptausschuß*, which was supposed to represent the public interest and elect the board (*Verwaltungsrat*), was constructed in such a way as to give state and party political interests a majority (see Hoffmann, 1975, pp.41-42; Schaaf, 1975, p.299). The first *Hauptausschuß* contained six SPD representatives, two CDU representatives and one liberal (Hoffmann, 1975, p.42). Four of its members were prime ministers of the participant *Länder* (Hoffmann, 1975, p.41). The powers of the *Hauptausschuß* were increased to include budgetary powers, later useful in getting rid of politically unpalatable employees on the pretext of rationalisation (see Schaaf, 1975, p.300). The *Verwaltungsrat*, modelled on the BBC's Board of Governors, and supposedly independent of special interests, also became a victim of party political interference. The *Hauptausschuß* was supposed to select the members of the *Verwaltungsrat*, but it was agreed that the *Land* representatives on the *Hauptausschuß* should each nominate a member (Hoffmann, 1975, p.43). The remaining two seats were proposed by the trade unions and the North Rhine-Westphalian representative on the *Hauptausschuss*

(Hoffmann, 1975, p.43). Not only had the interests of other groups been pushed back in favour of state and party political interests, but the *Hauptausschuß* had been reduced to an "Akklamationsgremium" (Hoffmann, 1975, p.43).

In agreeing to these concessions, Greene may have underestimated the political parties' ability to assume a dominant role in the supervisory committees. He had attempted to apply the BBC model, with the *Hauptausschuß* taking the role of the monarch in appointing the *Verwaltungsrat*, which was modelled on the Board of Governors (Schaaf, 1975, p.299). Unlike Britain, where the Board of Governors acted as independent personalities without party political allegiance, the West German supervisory committees were regarded as party political bodies from the start. Michael Tracey argues that Greene was quite aware of the problems posed by the political parties, but was prepared to take a risk in the hope that politicians in the supervisory committees would not abuse their position (1983, p.52, p.109). Regardless of any institutional measures, politicisation was probably inevitable, because of political distrust of broadcasting and a lack of party political consensus about broadcasting's role in a liberal democracy. Tracey points out the difficulty of the task which Greene faced in establishing in one year what had been achieved in Britain over centuries within the framework of a totally different political culture (1983, p.64). In comparing the BBC to NWDR, Tracey writes:

Die Arbeit der BBC war politisch von der lebensbejahenden Atmosphäre abhängig, vom Einverständnis mit ihrer Rolle, innerhalb der britischen Kultur. Ohne diese Atmosphäre konnten alle institutionellen Vorrichtungen bei der Gründung einer unabhängigen Organisation nur versagen. Es gab unglücklicherweise für Greene

niemals die Gelegenheit, als Chef des NWDR, diese Bedingungen zu schaffen. (1983, p.52)

Once the British handed control of NWDR to the Germans, it began to disintegrate and become "ein Stückchen mehr Behörde" (Dierck Ludwig Schaaf cit. in Flottau, 1978, p.32).

The introduction of a foreign model to West German conditions was therefore only a partial success in terms of the Allied aim of independent broadcasting. Rightly or wrongly, the West German political authorities adapted the model to fit in with their own ideas of broadcasting in a democracy. What is clear, however, is that politicisation of West German broadcasting has its roots in this early period, and is not just a phenomenon of the 1970s.

#### 2.2.2. The Germans in control

Although the West Germans complained about the provincialism of the broadcasting system established by the Allies, they managed to increase the number of broadcasting stations still further. At the same time, the influence of the state and the political parties was increased at the expense of other groups. As Hans-Matthias Kepplinger points out: "Je älter die Anstalten sind, desto geringer ist in der Regel der in ihren Organen angelegte Staatseinfluß" (1982, p.81).

In 1953 West Berlin left NWDR and established its own station, Sender Freies Berlin (SFB). After much controversy NWDR was split in 1955 to form Westdeutscher Rundfunk (WDR), based in Cologne and

serving North Rhine-Westphalia, and Norddeutscher Rundfunk (NDR), based in Hamburg, and serving the *Länder* of Hamburg, Lower Saxony and Schleswig-Holstein (Bausch, 1980, p.212). Following a plebiscite in 1955, the French returned the Saarland to West Germany, and a separate station for this Land, Saarländischer Rundfunk (SR), was established in 1957 (see Schütte, 1975, pp.234-235). In 1961 the Deutsche Welle (DW) and Deutschlandfunk (DLF) were established by central government for the purpose of overseas broadcasts. ZDF, the only national station broadcasting solely television, was established by inter-Land agreement in 1961, and started transmissions in 1963. In rational terms it may have been more sensible to reorganise the stations territorially, but in spite of proposals for reform, including the *Michel-Kommission* report in 1970 on broadcasting in the south-west, nothing has changed (see Sandford, 1975, pp.75-76). Bausch concludes that any reform would probably require a territorial reform of the *Länder*, and this is unlikely (1980, p.244).

The disintegration of NWDR is an obvious example of political dissatisfaction with the Allied system of broadcasting. The split was in part the result of resentment in North Rhine-Westphalia about the centralisation of broadcasting activities in Hamburg, and the dominance of the SPD *Länder* of Hamburg and Lower Saxony (Hoffmann, 1975, p.48; Schaaf, 1975, p.305; Bausch, 1980, p.204). The North Rhine-Westphalian CDU government also resented what they saw as the leftist bias of NWDR, which was variously described by the CDU as being "unchristlich", "atheistisch", and "kommunistisch" (see Hoffmann, 1975, p.34). These accusations were reinforced by the liberal climate Greene

had fostered at NWDR and by the employment of several prominent left-wing journalists (see Schaaf, 1975, p.297). Legislation for a separate station for North Rhine-Westphalia, Westdeutscher Rundfunk (WDR), was introduced in January 1954. The British did not intervene as NWDR collapsed, because according to Rüdiger Hoffmann: "Die Stabilität des Systems war wichtiger geworden als die Einlösung demokratischer Wert- und Ordnungsvorstellungen" (1975, p.50).

The WDR broadcasting law of May 1954 established a parliamentary model of broadcasting. This was a further development on the NWDR model, which had become dominated by party political forces. The members of the WDR supervisory body, the *Rundfunkrat*, representing the public interest, were elected by the *Land* parliament, instead of being selected by groups and institutions, as was the case in the US-established broadcasting stations under the pluralistic model. The North Rhine-Westphalian prime minister, Karl Arnold (CDU), justified this decision calling parliament "die vom Volk autorisierte legitime Vertretung aller Belange des öffentlichen Lebens" (cit. in Schlie, 1979, p.55). According to Arnold, the pluralistic model resulted in the representation of narrow group interests, which threatened to devalue democracy and undermine parliament (see Bausch, 1980, pp.218-219).

However, the introduction of the parliamentary model at WDR resulted in a monopolisation of broadcasting supervision by the political parties. In the event, the *Land* parliament's role was decidedly limited, because the party political leaderships had worked out a prior list of *Rundfunkrat* candidates, which proportionally



reflected political strengths (see Bausch, 1980, p.222). The *Rundfunkrat's* right to elect the administrative council, the *Verwaltungsrat*, was restricted by party political solutions worked out beforehand (Bausch, 1980, p.222). The *Verwaltungsrat*, which was dominated by party political interests, was strengthened at the expense of the director-general, the *Intendant*, and the *Rundfunkrat*. It was responsible for supervising programme content, and could issue directives in individual cases to the *Intendant* (see Hoffmann, 1975, p.72). It was also given far-reaching powers over appointments and financial matters (Hoffmann, 1975, p.73). This opened up the route to *Proporz*, whereby top jobs in broadcasting are awarded according to party political considerations (Hoffmann, 1975, p.73; Bausch, 1980, p.223). NDR, created by the remaining NWDR participants (Schleswig-Holstein, Lower Saxony, and Hamburg) followed North Rhine-Westphalia's example in June 1955, with a law similar in construction to the WDR broadcasting law. Here politicisation was reinforced by the necessity to reflect the party political interests of three *Länder*.

In Bausch's view, the disintegration of NWDR marked the beginning of "der Einbruch der Parteien" in West German broadcasting,

indem nicht mehr die gesellschaftlich relevanten Kräfte die Aufsichtsgremien stellten, sondern die Landtage, und die Landtage konnten das nur nach dem Proporz, nach der jeweiligen Zusammensetzung der Parlamente. Da fing das an. (Interview, 29.7.1987)

### 2.3 The structure of public service broadcasting in West Germany

According to Helga Montag, public service broadcasting in West Germany is characterised by the principles of federalism, corporations of public law, and pluralistic control (1978, p.26). By describing the system and associated problems, some light can be shed on the nature and practice of this complex system.

West Germany's federal structure, encompassing ten federal states or *Länder*, and West Berlin, which has a special status, is largely reflected in regionally-based broadcasting stations. Decentralization is reinforced by the fact that the *Länder*, as opposed to the Federal government or *Bund* in Bonn, are responsible for broadcasting policy, which comes under their constitutionally guaranteed sovereignty in matters of culture and education (Art. 30. *Grundgesetz für die Bundesrepublik Deutschland vom 23. Mai 1949*, in Ring, 1980, A-I 1, pp.1-6). Federalism is generally regarded as beneficial to broadcasting's independence because it results in a division of power, and diversity. Bausch writes:

Föderalismus bedeutet eine vertikale und eine horizontale Gewaltenteilung, nämlich eine Verteilung der Funktionen in gestufter Ordnung zwischen dem Staat und der gegliederten Gesellschaft einerseits, und eine Verteilung der Funktionen in räumlicher Aufgliederung andererseits. Föderalismus ist also nicht nur regionale Aufteilung der Macht, sondern ist auch verbunden mit dem Zwang zur Kooperation im Zeichen der Subsidiarität und der Solidarität. Er ist zugleich ein Bekenntnis zu gemäßigtem politischem und sozialem Pluralismus und bedeutet Abwehr gegen die Allmacht des Staates, Abwehr gegen die radikale Forderung einer Autonomie der gesellschaftlichen Gruppen, Abwehr gegen Kollektivismus. (Bausch, 1980a, p.67)

However, variations in the size of stations has meant that small stations, like RB, SFB and SR, can only exist on subsidies from their larger neighbours, set out in an agreement amongst the regional broadcasting stations (*ARD-Vereinbarung Finanzausgleich vom 29. November 1983*, in *ARD Jahrbuch 1984*, pp.386-7).

There are now nine regional stations established by law or by inter-*Land* agreement if a transmission area covers more than one *Land*. These stations are:

- Hessischer Rundfunk (HR), established in 1948, based in Frankfurt, and serving Hesse
- Radio Bremen (RB), established in 1948, and serving the city state of Bremen
- Süddeutscher Rundfunk (SDR), established in 1949, based in Stuttgart, and serving the northern part of Baden-Württemberg
- Bayerischer Rundfunk (BR), established in 1948, based in Munich and serving Bavaria
- Südwestfunk (SWF), established in 1949, based in Baden-Baden, and serving the Rhineland-Palatinate and the southern part of Baden-Württemberg on the basis of an inter-*Land* agreement
- Sender Freies Berlin (SFB), established in 1953, based in West Berlin, and serving this area
- Norddeutscher Rundfunk (NDR), established in 1955, based in Hamburg and serving Lower Saxony, Schleswig-Holstein, and the city state of Hamburg on the basis of an inter-*Land* agreement
- Westdeutscher Rundfunk (WDR), established in 1955, based in Cologne, and serving North Rhine-Westphalia

- Saarländischer Rundfunk (SR), established in 1957, based in Saarbrücken, and serving the Saarland.

On 9th June 1950 the regional stations or their antecedents entered a loose federation for cooperation purposes, the *Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* (ARD) (see *Satzung der Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland (ARD) vom 9. Juni 1950 in der Fassung vom 7. Juni 1962*, in Ring, 1980, C-V 1, pp.1-4). The original idea of cooperation had been initiated by Hans Bredow in 1947, and had been further encouraged by Hugh Greene (see Herrmann, 1975a, p.213).

However, initially there was some reluctance to cooperate because memories of the *Reichsrundfunkgesellschaft* were still strong, but mutual problems made cooperation a necessity (Herrmann, 1975a, pp.213-214; Flottau, 1978, p.40; Kapust, 1979, pp.40-41). The establishment of ARD also provided a means of presenting a united front against Federal Government attempts in the 1950s to increase its influence on broadcasting (see Kapust, 1979, p.40; Bredow cit. in Bausch, 1980, pp.257-258). ARD has no legal status, but represents the public interests of all the regional stations. Major decisions affecting ARD are taken by the *Hauptversammlung*, composed of the *Intendanten* and the chairmen of the supervisory councils in each station; decisions of a day-to-day nature are taken at regular meetings of the *Intendanten* (*Satzung der ARD*, Paragraph 5, p.3).

ARD achieved its true significance with the introduction of television, which was too expensive for individual broadcasting stations acting on their own. In March 1953 the ARD stations signed an agreement, the *Fernsehvertrag*, which established a network system to run the first television channel, *Deutsches Fernsehen* (DFS) (*Verwaltungsvereinbarung der Landesrundfunkanstalten über die Zusammenarbeit auf dem Gebiet des Fernsehens ("Fernsehvertrag")*) vom 27. März 1953, in der Fassung vom 2. Juli 1964, in Ring, 1980, C-V 2, pp.1-4). This agreement also sets the level of contributions from each station to the network. The individual stations contribute according to the following scale (*Fernsehvertrag*, Ziffer 5, p.2):

BR	17%
HR	8%
NDR	19%
RB	3%
SR	3%
SFB	8%
SDR	8%
SWF	9%
WDR	25%

In rational terms it would have made more sense for each station to specialise in certain types of programming, but the stations have held fast to the principle that each station should maintain the full spectrum of broadcasting departments (see *Fernsehvertrag*, Ziffer 5, p.2). Some specialisation does occur, with the larger stations taking on greater responsibilities. The network news department is based at NDR, and major sports coverage is centred at WDR. Each ARD station has the right to opt out of the network in order to offer regional alternatives (*Fernsehvertrag*, Ziffer 6, p.3). Cooperation for *Deutsches*

*Fernsehen* was made obligatory with the passage of an inter-Land agreement on 17th April 1959, the *Abkommen über die Koordinierung des Ersten Fernsehprogramms* (in *ARD Jahrbuch*, 1970, p.311). The programme schedules of the ARD television network are put together by the *Ständige Programmkonferenz*, which meets under the chairmanship of the ARD *Programmdirektor* and is composed of the *Intendanten* of the individual stations, or their deputies (*Fernsehvertrag*, Ziffer 3 & 4, pp.1-2). The background work for the *Programmkonferenz* is undertaken by the *Programmdirektion*, based in Munich. The *Ständige Programmkonferenz* is advised by a committee, the *Fernsehbeirat*, composed of members from the supervisory councils of each station (*Fernsehvertrag*, Ziffer 3, p.1).

In addition to the networked television channel, each station opts out of the schedule between 18.00-20.00 to transmit regional programmes, although entertainment programmes predominate in order to attract advertising, which can only be shown before 20.00. Each station is also involved in the regional third television channels. These are run either by individual stations or (in two cases) jointly by three stations. They are: Bayern 3 (BR) since 22nd September 1964; Hessen 3 (HR) since 6th October 1984; Nord 3 (NDR,SFB,RB) experimentally since 4th January 1965 and officially since 20th September 1965; West 3 (WDR) since December 1965; and Südwest 3 (SWF,SDR,SR) since 4th April 1969. Three or four radio channels are run by each station for its transmission area.

Zweites Deutsches Fernsehen (ZDF) was established on 6th June 1961 by an inter-Land agreement (*Staatsvertrag über die Errichtung der Anstalt des öffentlichen Rechts "Zweites Deutsches Fernsehen"*, in Ring, 1980, C-1V 3.1, pp.1-10). Based in Mainz, it broadcasts a national television service only, and is not part of ARD. It started broadcasting on 1st April 1963. An addition to the ZDF-*Staatsvertrag* obliges both ARD and ZDF to coordinate their national television services, so that the viewer can choose between alternative programmes (*Schlußprotokoll zu dem Staatsvertrag der Länder über die Errichtung der Anstalt des öffentlichen Rechts "Zweites Fernsehen"*, in Ring, 1980, C-IV 3.1, p.10). A coordination agreement between the two forms the basis of a joint schedule which fixes programmes at 15 minute intervals. This includes protected areas to prevent the scheduling of popular entertainment programmes against current affairs programmes (see Scharf, 1979, p.245).

The radio stations Deutschlandfunk (DLF), aimed at German and European audiences, and the Deutsche Welle (DW), which broadcasts to a global audience, both belong to ARD. They were established exceptionally in 1960 by central government because they do not target domestic audiences. RIAS (Rundfunk im amerikanischen Sektor) in West Berlin, established by the United States Information Agency (USIA) in 1946, has only an advisory status within ARD. Financed by the American and West German governments, its target audience is in the German Democratic Republic.

The public broadcasting stations still have the legal status of corporations of public law, an organisational form designed to enhance their independence and neutrality from both the state and private interests. They are self-administrating. The state has no control over programme content, or the day-to-day running of the stations. The *Länder* governments are only allowed to practise limited legal supervision of the stations, to ensure that broadcasting legislation is adhered to (see Jank, 1967, pp.101-102).

#### 2.3.1 The programme obligations of public service broadcasting

The programme obligations of the individual broadcasting stations, their *Programmauftrag*, are set out in broadcasting laws and standing orders. At ZDF there are additional programme guidelines, the *Richtlinien für die Sendungen des "Zweiten Deutschen Fernsehens"*, dated 11th July 1963 (in Ring, 1981, C-IV 3.3, pp.1-3). These are a set of general principles concerned with the right to private life, respect of marriage, the family, work, etc. They also contain political aims including the promotion of democracy, peace, and the peaceful unification of Germany. The ARD television network is also subject to a set of programme principles, the *Grundsätze für die Zusammenarbeit im ARD-Gemeinschaftsprogramm "Deutsches Fernsehen"*, approved by the *Intendanten* on 9th July 1971, and updated on 1st December 1982 (in ARD Jahrbuch, 1983, pp.403-404). These rules contain clauses on balance, objectivity, the separation of facts and opinion. They represent a strengthening of the rules contained in the individual broadcasting laws, and an attempt to offer a uniform set of rules for



the networked television channel. In practice, the fulfilment of the obligations contained in the broadcasting laws and guidelines depends on internal and external power structures, and on the broadcasters' view of their role. They can never be more than a framework to judge programme output.

The broadcasting stations have a duty, enshrined in most of the broadcasting laws, to provide information, education and entertainment in a balanced way. For example, the HR broadcasting law demands "die Verbreitung von Nachrichten und Darbietungen bildender, unterrichtender und unterhaltender Art" (Art.2, *Gesetz über den Hessischen Rundfunk* vom 2 Oktober 1948, in Ring, 1981, C-1V 1.2.1, pp.1-6). The three components are meant in the broadest sense and cannot be separated from each other. Entertainment, for instance, can contain informative and educative elements (see Scharf, 1979, pp. 238-239).

This general obligation is supplemented by other rules. Most stations have clauses stipulating that broadcasting should serve democracy, freedom, peace, and international understanding as well as encouraging social equality, tolerance, respect for the individual, humanity, and cultural consciousness in various formulations. Programmes must adhere to the Constitution, the *Grundgesetz*. Broadcasting as a whole, not individual programmes, must strive to reflect the diversity of existing opinion. Broadcasting must be independent and not serve any one interest. News must be impartial, objective, and truthful. News and comment must be separated, and

doubts about the accuracy of information sources must be mentioned. Programmes must not upset moral or religious views. Nor must they encourage prejudice on grounds of race, colour or creed or incite to violence or crime. Some, like BR, NDR, SWF, SR, and WDR, have special clauses on the provision of regional programming or on the reflection of regional characteristics. All laws contain a clause on the right to reply and also rules aimed at protecting young people from inappropriate programming. Some stations have additional programme obligations. For example, DW and DLF must present a comprehensive view of West Germany to foreign listeners. ZDF is obliged to promote the reunification of Germany "in Frieden und Freiheit" (*Paragraph 2*).

Advertising rules for television are contained in Paragraph 22, Clause 3 of the ZDF *Staatsvertrag*, but were made applicable to ARD by an addition to the ZDF agreement (*Schlußprotokoll zu dem Staatsvertrag der Länder über die Errichtung der Anstalt des öffentlichen Rechts "Zweites Deutsches Fernsehen"*, in Ring, 1981, C-IV 3.1, p.10). According to this, advertising must be separated from other programmes, and cannot be transmitted after 20.00, on Sundays, or on public holidays. The prime ministers fixed a limit of 20 minutes of advertising a day on ZDF and ARD. The influence of advertisers on editorial content is not allowed. Rules on advertising have since been reinforced with the passage of the 1987 inter-Land agreement on the reorganisation of broadcasting (see Chapter 3).

One cannot examine the programme obligations of public broadcasting without reference to the concept of *Ausgewogenheit* as it

relates to programming. According to Arthur Williams, *Ausgewogenheit* has a narrower meaning than the English term "balance", implying detailed measurements and weighing out (1976, p.81). *Ausgewogenheit* is a controversial term, which has played a central role in political disputes concerning the output of public broadcasting. According to Jörg Aufermann, *Ausgewogenheit* has often been abused or misunderstood by politicians, who have used it in their arguments to underline the left or right bias of public broadcasting (1977, p.301). This abuse, in his view, has undermined the autonomy of the broadcasting stations, and the principles underlying them - balance, diversity of opinion, editorial freedom, and journalistic fairness (1977, pp.301-302). Albert Scharf states that *Ausgewogenheit* has now come to symbolize "angepaßtes Duckmäsertum, undemokratischen Untertanengeist, Selbstzensur und Langeweile" (1981, p.202).

The ability of the political parties to interfere in this way is reinforced by their representation, and that of their sympathisers, on the internal broadcasting supervisory councils. There have been numerous instances of threats to break legislative agreements, public statements on lack of *Ausgewogenheit*, and outright interference in programme policy by the political parties in their attempt to institute their concept of *Ausgewogenheit* (see Aufermann, 1979, pp.365-369). Party political obsession with *Ausgewogenheit* has also affected personnel policy in the broadcasting stations, because of the insistence on political balance amongst leading broadcasting employees (see Schneider, 1979, pp.364-394). For instance, a political commentator who is a member of the CDU, or thought to be sympathetic

to it, has to be balanced out with a colleague sympathetic to the SPD. Personnel packages are often agreed by the political parties, leaving only a formal decision to the supervisory committees and the *Intendant* (see Appel, 1976, p.461). In many instances the political allegiances of an employee appear to be more important than professional experience (see Aufermann, 1977, pp. 310-311). This has implications for the independence and critical nature of broadcasting, because journalists become too dependent on their party political patrons. Of course, journalists do not always follow the party line, but the job of rectifying the situation would appear to rest too heavily with the political parties, at the expense of the internal supervisory committees and the *Intendant*, who are legally responsible for ensuring that *Ausgewogenheit* is upheld.

The term *Ausgewogenheit* was first introduced by the Constitutional Court in 1961. It is rarely found in broadcasting legislation, although other terms, which refer to impartiality, objectivity, neutrality, and diversity of opinion, cover its meaning. The Court required that broadcasting be organised in such a way as to ensure

daß alle in Betracht kommenden Kräfte in ihren Organen Einfluß haben und im Gesamtprogramm zu Wort kommen können, und die für den Inhalt des Gesamtprogrammes Leitgrundsätze verbindlich machen, die ein Mindestmaß von inhaltlicher Ausgewogenheit, Sachlichkeit und gegenseitiger Achtung gewährleisten. (*Urteil des Bundesverfassungsgerichts vom 28. Februar 1961 (Fernsehurteil)* in Lehr & Berg, 1971, p.222)

The use of the word "Mindestmaß", would appear to change the concept of *Ausgewogenheit* from a quantitative or mathematical idea to a qualitative one. To give all opinions equal time would be Utopian, because not all groups have the same significance. It would also seem

to imply that *Ausgewogenheit* applies to the whole spectrum of broadcasting output, including entertainment, which according to the Constitutional Court is also a factor in the formation of opinion (*Fernsehurteil*, in Lehr & Berg, 1971, p.254). However, most discussions about *Ausgewogenheit* have centred on political balance between the CDU/CSU and SPD in news and current affairs output, and in personnel matters, thus narrowing the interpretation and resulting in a polarisation between the two parties (see Schwarzkopf cit. in Scharf, 1981, p.217). If broadcasting was looked at in its entirety, accusations of a lack of *Ausgewogenheit* might be more difficult to sustain.

The essence of *Ausgewogenheit* means that the broadcasting stations must not identify themselves with certain interests or organisations, and that no group within society must be excluded from expressing its opinions. This is part of broadcasting's integrative function, which is not incompatible with its critical function (see *Bericht der Kommission zur Untersuchung der rundfunkpolitischen Entwicklung im südwestdeutschen Raum*, 1970, cit. in Flottau, 1978, p.132). It implies diversity of opinion, and the right to report controversial themes and minority views (see Schwarzkopf, cit. in Scharf, 1981, p.217). This ties in with constitutional pronouncements, which have called broadcasting not only a "Medium", but also "ein eminenter Faktor" in the formation of public opinion (*Fernsehurteil*, in Lehr & Berg, 1971, p.254). *Ausgewogenheit* does not refer to the content of an individual programme, but to the totality of output (Aufermann, 1977, p.309; Flottau, 1978, p.131). In the case of the ARD network, *Ausgewogenheit*

is applied to separate programme areas (*Grundsätze für die Zusammenarbeit im ARD-Gemeinschaftsprogramm "Deutsches Fernsehen" vom 9. Juli 1971*, in *ARD Jahrbuch*, 1983, p.403). Nor does *Ausgewogenheit* refer to ARD and ZDF in sum, only to the output of one channel. For instance, a ZDF current affairs programme with a bias to the right, cannot be balanced out by an ARD offering leaning to the left (Aufermann, 1977, p.310).

*Ausgewogenheit* is, in fact, structurally linked to democracy, by ensuring that the public are provided with the necessary information and diversity of opinion to allow informed choices. The concept of *Ausgewogenheit* is, however, clearly confined to the existing democratic order, which is reflected in broadcasting legislation requiring loyalty to the *Grundgesetz* and democratic norms (see Aufermann, 1977, p. 308). This means that there can be no balance of opinion between the opponents and the proponents of democracy (Schwarzkopf cit. in Scharf, 1981, p.217). Further limits to *Ausgewogenheit* are to be found in the inequalities of society, which must be reported and portrayed in both an objective and an objectively critical way (Aufermann, 1977, p.311). These limitations are reinforced by the need to select information (see Scharf, 1981, p.216). Aufermann states, however:

Eine "unausgewogene" soziale Realität ausgewogen darzustellen, hieße nichts anderes, als Konflikte und Interessengegensätze zu verschleiern und veränderungsbedürftige soziale Mißstände oder politische Fehlentwicklungen zu tabuisieren; das aber liefe auf einen (apologetischen) Anpassungsjournalismus und eine (ideologisch)-manipulative Publizistik hinaus. (1977, p.312)

This shows that there are clearly two sides to the *Ausgewogenheit* coin. It exists, on the one hand, to protect the public from biased

opinion. On the other hand, it allows journalists to open up the lid on social inequalities, thus reinforcing broadcasting's role as "ein eminenter Faktor" in shaping public opinion.

### 2.3.2 Pluralist supervision of public broadcasting in theory and in practice

The principle of institutionalised pluralist supervision in West German public broadcasting aims to ensure public accountability and independence from the state and other groups. Supervision by internal committees, as distinct from control, is concerned with the final product and the fulfilment of legal norms, rather than with motives and internal processes (see Ronneberger, 1986, p.267). In theory editorial decisions rest with the broadcasters, and ultimately with the *Intendant*. Some distinction has to be made between direct accountability to the public, and institutionalised supervision. The former is limited and can only be gauged by correspondence and ratings, leaving the public interest represented in small internal committees (see Ronneberger, 1986, p.268).

The internal supervisory structure of West German public service broadcasting is based on a tripartite system. Its three components are a broadcasting council (*Rundfunkrat*), an administrative council (*Verwaltungsrat*), and the director-general (*Intendant*). Most of the broadcasting laws are fairly uniform in this respect, although there are differences, relating to different composition, the division of

power between each supervisory body, and the extent of political or state representation (see Jank, 1967, p.18).

The *Rundfunkrat* (*Fernsehrat* in the case of ZDF) is the largest supervisory body with a membership ranging from 11 to 66. The *Rundfunkrat* represents the public interest. In theory its members are not representatives of the groups and organisations which nominate them. The *Rundfunkrat* is responsible for electing the *Intendant*. At SWF this is done jointly by the *Rundfunkrat* and the *Verwaltungsrat*. The *Rundfunkräte* advise the *Intendant* on programme policy, and make sure that the programme rules are adhered to. In most cases they approve or draw up the standing rules. At WDR and NDR, new legislation passed in 1985 and 1980 respectively has led to an increase in power for the broadcasting councils of these stations. Programme supervision, prior to these reforms, was located in the smaller and unrepresentative *Verwaltungsrat* (*Staatsvertrag über den Norddeutschen Rundfunk vom 16. Februar 1955*, in Ring 1981, C-IV 1.3.1, pp.1-11; *Gesetz über den "Westdeutschen Rundfunk Köln" vom 25. Mai 1954*, in Ring, 1981, C-IV 1.9.1, pp.1-11). At BR, *Rundfunkrat* approval is required for the appointment of top broadcasting personnel right down to departmental heads (*Bayerisches Rundfunkgesetz vom 10. August 1948*, Art.7, in Ring 1981, C-IV 1.1.1, pp.1-9). The *Rundfunkräte* approve the budget and yearly accounts. At NDR and WDR, *Rundfunkrat* approval is needed for the purchase or production of programmes costing over a certain amount. The broadcasting councils have no executive powers, although they are empowered at ZDF, DLF, and DW to issue additional programme guidelines.



Although the *Rundfunkräte* cannot intervene directly in programme affairs, some of their powers allow indirect influence. Directly they can influence programme content by advising the *Intendant*, supervising adherence to the programme rules, issuing programme guidelines at ZDF, DW and DLF, and by programme supervision after transmission. Indirectly, the *Rundfunkräte* can influence programmes by way of personnel and financial decisions. Under the new WDR broadcasting law of 1985, these powers are very extensive (*Gesetz über den "Westdeutschen Rundfunk Köln*, dated 11.1.1988, in MPD II, 1988, pp.157-168).

The composition of the broadcasting councils varies from station to station. The groups and institutions which nominate or elect members include parliaments, governments, the trade unions, employers' organisations, the churches, sporting federations, consumer groups, cultural and educational institutions, and groups representing women, youth, senior citizens and immigrant workers. There are two models for selecting broadcasting councils. In the pluralistic, *ständisch* model, the majority of broadcasting council members are selected directly by groups and institutions. The remainder are nominated by the *Land* parliament. This model was applied in those areas under American occupation, because the Americans were keen to limit executive representation in the supervisory councils. Under the parliamentary model, the members of the *Rundfunkrat* are either elected in their entirety by the *Land* parliaments, or elected in part by parliaments and delegated in part by governments, as is the case at DW and DLF. BR, HR, RB, SDR, SWF and SR operate under the pluralistic

model. A mixed system, incorporating elements of both models, operates at SFB, NDR, WDR and ZDF (see Kepplinger, 1982, p.82). The system whereby the *Rundfunkrat* was elected in its entirety by the *Land* parliaments, is no longer used, since WDR and NDR introduced new legislation in 1985 and 1980, respectively, which brings them closer to the pluralistic model.

The move away from the parliamentary model by NDR and WDR is a positive development, because of the inherent defects in the parliamentary system of selection which resulted in polarised broadcasting councils that were dominated by government, parliamentary, and party political interests. The proximity to the political parties, and in particular the governing party, undermined the principle of broadcasting's independence from the state, and faced *Rundfunkrat* members with a conflict of loyalties between party political and public interests (see Schlie, 1979, pp.60-61). The concentration of party political interests in the supervisory bodies also constituted an inhibition of the classical liberal media function of control and criticism. As Franz Ronneberger points out: "Wie läßt es sich vertreten, daß diejenigen, die durch die Medien kontrolliert werden sollen, umgekehrt die Medien kontrollieren?" (1986, p.266).

In most cases limits have been placed on the number of government and parliamentary representatives in the broadcasting councils. At SDR members of the government are excluded (Paragraph 4.4, *Satzung für den "Süddeutschen Rundfunk" in Stuttgart*, in Ring, 1981, C-IV 1.7.2, pp.1-6). A similar clause is contained in legislation for RB

(Paragraph 5.5 *Gesetz über die Errichtung und die Aufgabe einer Anstalt des öffentlichen Rechts - Radio Bremen*, in Ring, 1981, C-IV 1.4.1, pp.1-9) At ZDF the number of government and parliamentary representatives in the 66-member television council is particularly high, because account has to be taken of all the *Länder* involved (Paragraph 14, *Staatsvertrag über die Errichtung der Anstalt des öffentlichen Rechts "Zweites Deutsches Fernsehen"*, in Ring, 1981, C-IV 3.1, pp.1-10). At ZDF, each *Land* government nominates one representative, and a further three members are nominated by central government. Twelve members are nominated by the party political leaderships, on the basis of their strength in the *Bundestag*. Direct party political and government representation therefore constitutes almost 40% of the *Fernsehrat's* membership. Government influence is increased by the way the remaining *Fernsehrat* members are chosen. Unlike other broadcasting laws, under which groups and institutions choose their own candidates, the ZDF *Staatsvertrag* requires that 21 members be selected by the *Land* prime ministers from a list of three candidates, submitted by each group and institution. A further fourteen members representing the realm of culture, education, science, the self-employed, women, youth, and the family, are chosen directly by the *Land* prime ministers. The churches are the only group to send *Fernsehrat* members without prime ministerial veto. In this way the political parties have a stronger hold over ZDF than at any other station.

In spite of the limits placed on government and parliamentary representation, the political parties still manage to dominate the

affairs of the *Rundfunkräte*. This is particularly the case at ZDF. So-called *Freundeskreise*, semi-official groupings organised along party political lines, are used to secure the allegiance of non-political representatives. There are advantages, as Ronneberger points out. The existence of *Freundeskreise* makes it easier to reach compromises, resulting in stable majorities and less group interest (Ronneberger, 1986, pp.274-5). The political parties are better informed than other groups, and know how to structure debates (Ronneberger, 1986, p.275). Reinhard Appel, editor-in-chief at ZDF, recalls an instance where a non-political *Rundfunkrat* member commented: "Ohne Freundeskreis wüßte ich nicht, was los ist" (Appel, 1976, p.464). However, these advantages do not obscure the fact that non-political issues are more easily politicised, and interests which do not fit in with the *Freundeskreise* are neglected (Ronneberger, 1986, p.275). The system tends to focus power in the hands of the political parties, who only represent one group amongst many.

Some of the grosser malfunctions of the system have been eliminated by WDR's and NDR's move towards a pluralistic method of broadcasting council composition. However, there are still inherent structural problems in the pluralistic model. These problems relate to the status of the groups and institutions represented in the councils (see Montag, 1978, p.29). The criteria for selection seem vague and somewhat arbitrary, tending to favour those groups which are well-organised and which already have ample access to media channels (see Ronneberger, 1986, 277). Another factor relates to the relevance of groups and institutions, as the present system does not

seem to give enough thought to the loss of importance of some groups, and the rise in importance of others. Schwarzkopf refers to the 'Perpetuierungs-Bonus' of certain groups and institutions (cit. in Ronneberger, 1986, p.284). Hennig uses the example of refugee organisations, which although influential after the war, are not so relevant today (Hennig, 1981, p.56). Their proximity to the CDU/CSU may explain their continued representation (Hennig, 1981, p.56). Some groups are obviously chosen for their specialist knowledge, for example the universities. Other criteria seem to be the size of membership, or function and importance in society (see Ronneberger, 1986, pp.277-282). The type of groups represented depends on legislation passed by the *Länder*, which may seek to include those groups that fit in best with party-political motives. Unlike the political parties, groups and institutions are also encumbered by a lack of democratic legitimation, relying instead on a smaller interest-orientated base (see Montag, 1978, p.29).

The most recent broadcasting laws have gone some way to solving the dilemma of relevance, and have sought to make representation more flexible and adaptable to changes within society. At RB five broadcasting council members are chosen to represent interests which are not easily organised or insufficiently represented (Paragraph 6.2, *Gesetz über die Errichtung und die Aufgaben einer Anstalt des öffentlichen Rechts - Radio Bremen*, in Ring, 1981, C-IV 1.4.1). The 1980 NDR broadcasting law sets aside nine broadcasting council seats for new groups. These are chosen by the *Land* parliaments of each participatory *Land* (Paragraph 17, *Staatsvertrag über den Norddeutschen*

*Rundfunk (NDR)*, in Ring, 1981, C-IV 1.3.1). The 1985 WDR law makes special provision for the interests of the old, the handicapped, and immigrant workers (Paragraph 15.5., *Gesetz über den "Westdeutschen Rundfunk Köln"*, in MPD II/1985, pp.92-103). However, further reform of this nature depends on the *Länder*, who may find it difficult to reconcile their own party political interests with increased competition from other groups within the broadcasting councils.

An arrangement aimed at increasing the relevance of pluralist representation was proposed by Walter Mahle and Wolfgang Langenbucher in 1973 (1973, pp.322-330). Arguing that existing criteria of selection strengthened those groups who already have ample access to broadcasting channels, they put forward the alternative of "Umkehrproporz" to secure a better position for underrepresented interests:

Die Auswahl der gesellschaftlich relevanten Gruppen sollte nicht oder nicht ausschließlich nach ihrer Bedeutung (Macht, Größe usw.) in der Gesellschaft erfolgen, sondern nach dem Kriterium, wie weit die jeweilige Gruppe zu ihren Zugangschancen zur öffentlichen Kommunikation gefährdet ist. Allgemeiner läßt sich dieses kommunikationssoziologische Selektionskriterium so formulieren: *Die Zugangschance einer Gruppe zum Rundfunkrat sollte umgekehrt proportional zu ihrer Zugangschance zur öffentlichen Kommunikation sein.* (1973, p.328)

The proposal is interesting and undoubtedly fairer than the present system, but it is unlikely that the *Länder* would allow such a weakening of party political representation. Other problems associated with pluralist control are lack of time, the infrequency of meetings, which usually occur every three months, and dependence on the broadcasting stations for information (see Hennig, 1981, pp.65-66).

The *Verwaltungsrat* is smaller than the *Rundfunkrat*, and is composed of between 7 and 9 members. It is either elected in its entirety by the *Rundfunkrat* (DW, DLF, and NDR), or mainly elected by the *Rundfunkrat*, with the remainder belonging *ex officio*, or elected by the *Land* parliaments. At SFB the *Verwaltungsrat* is a sub-committee of the *Rundfunkrat*. However, as a rule membership of the *Rundfunkrat* excludes membership of the *Verwaltungsrat*. At RB, HR, SFB and WDR there is station employee representation, but as Kepplinger points out this means that supervision is exercised by those who are supposed to be supervised (1982, p.83). SDR is the only station to exclude government members from the *Verwaltungsrat*. In some cases party political dominance of the *Verwaltungsrat* is more concentrated than in the *Rundfunkrat*. This is particularly the case at ZDF, where the nine-member council in December 1986 included three *Land* prime ministers, the West German foreign minister, and three leading civil servants (see ZDF Jahrbuch, 1986, p.47). At BR the presidents of the Bavarian *Landtag*, the *Senat*, and the *Land* administrative court make up three of the seven members. The strong representation of the state in the *Verwaltungsrat* is historical and represents an attempt to counter Allied insistence on limited party political influence in the broadcasting councils (see Jank, 1967, p.65).

The administrative councils are involved in supporting and supervising the financial management of the stations. In most cases their approval is required for financial decisions, and in some cases decisions relating to employment contracts over a certain wage level. Although the *Verwaltungsräte* are not involved in programme

supervision, their supervision of financial matters allows ample scope for indirect influence. At NDR and WDR the administrative councils are specifically barred from intervening in programme policy. This is a reversal of earlier legislation which placed programme supervision and the election of the *Intendant* in the hands of the *Verwaltungsrat*. At SWF and ZDF, the powers of the administrative councils are greater than at other stations. The SWF *Verwaltungsrat* supervises the activities and running of the station as a whole. If there are differences of opinion about editorial policy between the SWF *Intendant* and the *Rundfunkrat*, the *Verwaltungsrat* makes the final decision. It also elects the *Intendant* jointly with the *Rundfunkrat*. At ZDF, the administrative council, besides undertaking economic supervision, supervises the activities of the the *Intendant* in general.

Of all the supervisory components, the role of the *Intendant* has diminished most in significance over the years as the balance of power has shifted towards the supervisory committees. The *Intendant* represents the station's outside interests and manages the station in accordance with the wishes of the broadcasting and administrative councils. He is also ultimately responsible for editorial policy, and approves most staff contracts, unless these require the approval of the supervisory bodies. The decrease in the significance of the *Intendant* may be due partially to the increase in broadcasting activities and the increase in transmission hours (see Bausch, in Fischer, 1979, p.233). This has resulted in a need to delegate responsibilities. However, with the exception of RB, the position of *Intendant* has remained monocratic. Since 1979, the *Intendant* at RB



has headed a directorate, responsible for running the station, which means that his managerial responsibilities are less than those of his counterparts. At SDR the *Intendant* shares the financial management of the station with a managing director, but the *Intendant* makes any final decisions. There have been calls for an extension of this form of *Intendanz*, but apart from RB, and an experiment at SFB in the 1950s, there have been no further experiments of this kind (see Fischer, 1979, pp.15-16). If the system was extended to other broadcasting stations, it might reinforce politicisation in the search for a politically balanced station management.

The *Intendant's* position is different to that of the other supervisory bodies, because he is also an employee of the station. This means that his loyalties are split between the broadcasters and the supervisory bodies. Hans Bausch, *Intendant* at SDR defined his role to me in the following way:

Also im Gesetz steht, der Intendant ist allein für das Programm verantwortlich. Daran halte ich mich. . . Ich muß für meine Arbeiter Freiraum schaffen, daß sie frei arbeiten können, ich muß denen auch immer noch auf die Finger klopfen dürfen. Ich muß denen sagen, das geht nicht, das ist zu teuer, oder das ist nicht korrekt oder so ähnlich, oder ich verantworte das nicht, schlicht und einfach. (Interview, 29.7.1987)

The *Intendant* must also maintain a working relationship with the supervisory bodies, because they are not only responsible for his appointment, but also approve many of his decisions. According to Martin Neuffer, former *Intendant* of NDR, those responsible for the *Intendant's* election often expect something in return, especially in personnel policy (cit. in Fischer, 1979, p.35). There do appear to be

direct attempts at interference from politicians, but the degree to which they are successful depends on the *Intendant's* ability to stand firm. On this subject Bausch says:

Politiker anrufen, das gibt's schon. Mich rufen sie inzwischen nicht mehr an, weil sie wissen, es hat keinen Zweck, aber bei anderen Kollegen, die auch weniger lang Erfahrung haben, oder die gar mehr oder weniger als Mitglieder einer Partei auf ihren Stuhl gekommen sind, da rufen die schon an. (Interview 29.7.1987)

The appointment of the *Intendant* is usually political, and sometimes controversial (see Brüning & Nax, 1976, p.104; Bausch cit. in Fischer, 1979, p.26). Most *Intendanten* are members of either the SPD or the CDU/CSU. The proportion of those with a journalistic background has fallen over the years; many have a legal background (see Fischer, 1979, p.354). At present there are only three *Intendanten* with a journalistic background; Hans Bausch at SDR, Peter Schiwy at NDR, and Friedrich Nowottny at WDR. This small number can be partly explained by the diminishing creative nature of the post, and the increasing significance of managerial talents (see Neuffer in Fischer, 1979, p.34). Bausch comments: "Die erwiesene Befähigung zum Management ist für die Wahlgremien wichtiger als die Herkunft aus einem Kommunikationsberuf" (cit. in Fischer, 1979, p.355). However, another reason for this development may be the past inability of the supervisory bodies to control *Intendanten* with a journalistic background. On this subject, Hoffmann writes:

Die Erfahrung nämlich hat gezeigt, daß journalistische sowie rundfunk- und fernsehspezifische Fachkenntnisse das "wertvollste Instrument" der Intendanten darstellen, um Angriffe gegen die Rundfunkanstalten zu parieren. (1976, p.117)

However, an increase in *Intendanten* with a journalistic background is not the perfect solution, as events at SFB, involving the former television correspondent, Lothar Loewe, revealed. Loewe was forced to leave his post as *Intendant* of SFB after a series of editorial and financial blunders.

In spite of the decline in the role of the *Intendant*, it is still important in maintaining the integrity and independence of the station. To a large degree this depends on personalities, and the ability to maintain an independent stance in the face of undue pressure from the supervisory bodies, political parties, and broadcasting employees.

#### 2.4 The constitutional position of West German broadcasting

The degree to which the media are "free" or "independent" mirrors to a certain extent the social and political structures of a nation. It follows that the notion of press and broadcasting freedom is widely accepted as an intrinsic component of the democratic order in countries like West Germany and the United Kingdom. In West Germany the constitutional framework plays an important role in shaping the normative expectations of broadcasting. An examination of the legal foundations of West German broadcasting is therefore essential, as they reveal why broadcasting is organised as it is, and why reinterpretations are undertaken in the light of new experience.

The West German *Grundgesetz*, the Basic Law, which has priority over all other laws, acts as a legal shield to protect the media from censorship and interference. The adoption of the *Grundgesetz* in 1949 was a direct result of the experience of past upheavals, and in particular of National Socialism. According to John Sandford, this historical past means that there is "a much higher level of awareness of the legitimacy of questions about media purposes than in a country with a much more consistent continuity of political experience like Britain" (1988, p.6).

Article 5 of the *Grundgesetz* remains central to any constitutional interpretation of West German broadcasting law. It stipulates:

- 1) Jeder hat das Recht, seine Meinung in Wort, Schrift und Bild frei zu äußern und zu verbreiten und sich aus allgemein zugänglichen Quellen ungehindert zu unterrichten. Die Pressefreiheit und die Freiheit der Berichterstattung durch Rundfunk und Film werden gewährleistet. Eine Zensur findet nicht statt.
- 2) Diese Rechte finden ihre Schranken in den Vorschriften der allgemeinen Gesetze, den gesetzlichen Bestimmungen zum Schutze der Jugend und in dem Recht der persönlichen Ehre. (cit. in Ring, 1981, A-I 1)

The *Grundgesetz* says little on broadcasting directly, except for the statement in the second sentence of the first paragraph, which guarantees the freedom to report. The fathers of the Constitution did discuss the idea of anchoring the principle of public service broadcasting within Article 5. However, this was rejected, because of concern about fixing future organisational forms, which might exclude alternative developments (see Klein, 1978, p.42; Montag, 1978, p.36). The attempt to fix the principle of public service broadcasting in the

Basic Law was also unsuccessful, because a significant proportion of the commission which drew up the Basic Law considered public service broadcasting to be a "Besatzungsdiktat" (see Bausch, 1975, p.19).

Otto Schlie calls the first paragraph of Article 5 the "klassisches Grundrecht der Meinungsäußerungsfreiheit" (1979, p.52). It encompasses the basic right of all, including broadcasters, to express their opinion and inform themselves from generally available sources. The term "allgemein zugängliche Quellen" is important because it enshrines the right of the individual (suspended in the National Socialist period) to listen to foreign stations (see Herrmann, 1975, p.384). The first clause of paragraph one protects all kinds of statements and all types of broadcasting content (see Herrmann, 1975, pp.82-83). The second clause of paragraph one, guaranteeing the freedom of the press and the right of broadcasters to report is, according to Herrmann, "eine verstärkende Wiederholung und Weiterbildung" of the first clause (Herrmann, 1975, p.60). Whereas this privileged status is afforded to the press as a whole, broadcasting and film are explicitly guaranteed only the right to report, although other broadcasting activities are clearly protected in the first clause. According to Herrmann this was done to prevent broadcasters from regarding broadcasting freedom as their own individual right (1975, p.54). Broadcasting freedom is not an individual right, but the recognition of broadcasting's need for independence, in order for it to fulfil a public function in the formation of public opinion (see Klein, 1978, p.21). As facts and opinion cannot be clearly separated, it is now generally accepted in

the Federal Republic that broadcasting freedom is equal to the freedom of the press (see Schlie, 1979, p.52).

The second paragraph of Article 5 sets out the limits to the freedom of expression and information. As Robertson points out: "Free speech is what is left of speech after the law has had its say" (1985, p.3). "Allgemeine Gesetze" refer to criminal and civil law, and copyright (see Herrmann, 1975, p.384). In disputes, individual freedom and broadcasting freedom have to be weighed against each other (see Herrmann, 1975, p.385). Broadcasting freedom can therefore only be limited to protect the basic rights of others.

The *Grundgesetz*, in guaranteeing the freedom of information and opinion, allows the individual to become freely and actively involved in society and the democratic process. The media are a necessary component of the democratic process as they provide much of the opinion and information on which the informed choices of the individual are based. This constitutes the substance of the media's constitutionally guaranteed right of function.

The *Grundgesetz* is therefore essential for the guaranteed freedom of broadcasting, and by extension for the public, political, and constitutional life of the country, but where ambiguities have arisen, or where politicians have no longer been able to find viable solutions to complex situations, the Federal Constitutional Court has been called upon to clarify and rectify. This legal definition has taken on extra significance with the emergence of the new media. It is clear that

the law is not static in its interpretation, but adaptable according to changing conditions, although the central core of basic rights and broadcasting freedom remains central to any redefinition of what is permissible. Kleinsteuber has described the Court's judgements on broadcasting as the "Kommunikationsverfassung" (1982, p.24). The Court's decisions are legally binding, and cannot be overturned by the *Land* parliaments or the *Bundestag*. The Constitutional Court is after all West Germany's Supreme Court (Bausch, Interview, 29.7.1987).

The Court's early decisions were instrumental in maintaining the public service broadcasting monopoly, although it has never declared private broadcasting to be unconstitutional. Called upon to make judgements on specific cases, it has always used the opportunity to make general statements on the constitutional position of broadcasting. There have been five major judgements on broadcasting since 1961. The first three are dealt with here, as they represent the situation before the dual system of broadcasting was introduced. The remaining two will be dealt with in Chapter 3.

The Court's broadcasting decision on 28th February 1961, the so-called *Fernsehurteil*, arose as a result of central government, under Chancellor Adenauer, establishing a private television organisation, *Deutschland-Fernsehen GmbH*, to license private programme providers. A complaint was brought by the SPD *Länder*, Hamburg and Hesse, who saw the *Bund* infringing upon the *Länder's* constitutionally guaranteed jurisdiction over culture and education (*Kulturhoheit*), and therefore over broadcasting (see Montag, 1978, pp.93-125). The *Bund's* actions

were declared unconstitutional (*Urteil des Bundesverfassungsgerichts* vom 28. Februar 1961 (*Fernsehurteil*), in Lehr & Berg, 1971, pp.221-256).

The Court decreed that the *Länder* alone had the right to legislate on broadcasting. Central government's legislative powers were limited to the technical side of broadcasting (p.221). It left open the *Bund's* right to legislate for overseas broadcasting services (p.243). The *Bund's* jurisdiction over telecommunications was subordinate to *Länder* jurisdiction over broadcasting policy, and it was required to act according to "der Grundsatz bundesfreundlichen Verhaltens" (p.242). However, the Court granted the *Bund* the sole right to erect and run transmitters, although it could not confiscate those transmission facilities already owned by the broadcasting stations (p.221, p.243).

The Court's main concern was with the independence of broadcasting and broadcasting's "öffentliche Aufgabe" (p.244). Central to its interpretation was the importance of Article 5 of the *Grundgesetz*, which guarantees the institutional independence of the media from the state. Broadcasting was not only a "Medium", but also "ein eminenter Faktor" in the formation of public opinion (p.254). This role was not only confined to news and current affairs, but to the totality of broadcasting output as well (p.254). However, the Court stated that broadcasting was subject to a "Sondersituation" (p.254). Unlike the press, which is characterised by a number of publications, an increase in the number of broadcasting stations was hindered by a lack of broadcasting frequencies and by high costs, which meant that it would remain the privilege of a few (p.254). For this reason broadcasting



had to be subject to legislation to enable it to carry out its function in the formation of public opinion, and to maintain its independence from the state and other powerful groups (p.255). The Court demanded that broadcasting be organised in such a way that:

alle in Betracht kommenden Kräfte in ihren Organen Einfluß haben und im Gesamtprogramm zu Wort kommen können, und daß für den Inhalt des Gesamtprogramms Leitgrundsätze verbindlich sind, die ein Mindestmaß von inhaltlicher Ausgewogenheit, Sachlichkeit und gegenseitiger Achtung gewährleisten. (p.255)

The Court did not exclude the possibility of private broadcasting as long as it was organised in the same way as public service broadcasting (p.255). Public service broadcasting monopolies were deemed constitutional, because public broadcasting was independent of the state and other groups, and because it guaranteed that the full scope of opinion within society was represented, both in programming and in the internal supervisory councils (p.255). The "Sonder-situation" of broadcasting, as regards frequencies and cost, was reconfirmed by the Constitutional Court's judgement on 27th July 1971 (*Urteil des Bundesverfassungsgerichts vom 27. Juli 1971 in dem Verfahren zur Überprüfung der Verfassungsmäßigkeit der Mehrwertsteuer der Rundfunkgebühren - Mehrwertsteuerurteil*, in MP 7 & 8, 1971, pp.207-236).

The Constitutional Court decision of 16th June 1981 dealt with the refusal of the Saarland government to grant a broadcasting licence to the *Freies Fernsehen AG*, a private broadcasting company, according to a clause in the Saarland broadcasting law, which had been added in 1967 (*Urteil des Bundesverfassungsgerichts vom 16. Juni. 1981*, in

Ring, 1981, A-III 3, pp. 1-25). The case gave the Court an opportunity to scrutinise the constitutional position of broadcasting in the light of the new media. Particular attention was paid to the "Sondersituation" of broadcasting and to whether it was still relevant given the emergence of cable and satellite. In the event the Court declared the Saarland law to be unconstitutional because it did not satisfy the demands of broadcasting freedom.

The Court reaffirmed broadcasting's constitutionally guaranteed role in contributing to the formation of public opinion, and the need for broadcasting to be independent of the state and other powerful interests (pp.16-17). To ensure this function, the Court ruled that legislation was still necessary, even if there was an increase in distribution outlets and the costs of broadcasting fell (p.17). The legislator was required to undertake material, organisational, and procedural measures, to ensure the fulfilment of freedom of information and opinion, guaranteed in Article 5 of the *Grundgesetz* (p.16).

The Court's insistence on the continued need for broadcasting legislation, was based on doubts about the effectiveness of market forces in securing diversity of opinion in broadcasting (p.17). Broadcasting's role in contributing to the formation of public opinion meant that it could not be left to "das freie Spiel der Kräfte", especially if this resulted in a concentration of opinion formation in the hands of a few (p.18). The Court rejected the notion of public broadcasting making up the deficits of diversity in private

broadcasting, because biased opinion in private broadcasting would distort the equilibrium of access for different opinions in society (p.18).

At this point the Court modified its earlier rulings. In addition to accepting the internally pluralistic system, exemplified by public service broadcasting, it was also prepared to accept the externally pluralistic model of broadcasting organisation, where plurality is achieved by a number of competing broadcasting channels or programme providers. In allowing this model, the Court stated that the legislator had to ensure that "das Gesamtangebot der inländischen Programme der bestehenden Meinungsvielfalt auch tatsächlich im wesentlichen entspricht" (p.19). For both models, the Court demanded that the legislator enact binding rules guaranteeing "ein Mindestmaß von inhaltlicher Ausgewogenheit, Sachlichkeit und gegenseitiger Achtung gewährleisten" (p.19). Unlike the internally pluralistic model, the individual programme provider operating under the external pluralistic model was not subject to *Ausgewogenheit*, but was required to ensure "sachgemäße, umfassende und wahrheitsgemäße Information und ein Mindestmaß an gegenseitiger Achtung" (p.19). In total, therefore, private broadcasters operating under the externally pluralistic model, had to satisfy the same requirements as regards diversity of opinion and *Ausgewogenheit*, as public broadcasting.

The Court had given some indication of the legal requirements necessary for private broadcasting, and by modifying the demands made of private broadcasting, was partially acknowledging that technology

was changing the broadcasting landscape, allowing a greater number of broadcasting channels. Further concessions made by the Court included less strict constitutional demands for experimental cable pilot projects, and the acceptance that external plurality could be achieved by different programme providers sharing the same frequency (p.19). However, some aspects of the judgement were still unclear. The Court gave no indication of the criteria by which external plurality could be said to be reached. This placed legislators and potential programme providers in a situation of uncertainty, as they could not be sure when they had to apply the principles of internal pluralism and when they were free to apply external pluralism.

## 2.5 Review

From this account it is clear that the shape of public broadcasting in West Germany has been determined by a historical past which gave scant regard to the principles of media freedom. The institution of public service broadcasting, guided by the principles of independence from the state, pluralist control, and service in the public interest, was an attempt by the Allies to rectify these past failings. However, the political parties found it difficult to accept the principle of independent, impartial broadcasting. There was little political consensus about the role of broadcasting in a liberal democracy. Most ideas centred on using broadcasting as a tool of politics, or of keeping it under tight control. This was born of the experiences of the National Socialist period, which made politicians suspicious of the medium and its assumed effects. The opposition of West German

politicians to independent broadcasting, reveals the difficulties of imposing a foreign model on a totally different political culture. Looking back at the British contribution to public service broadcasting in West Germany, Hans Bausch, SDR *Intendant*, said to me:

Das einzige, was der Hugh Greene nach Deutschland gebracht hat, war eben die Idee des Public Broadcasting. Das war den Deutschen nicht vertraut. Die sahen das mehr oder weniger gouvernemental. Da wo sie 1933 aufgehört hatten, wollten sie nach 1945 weitermachen. (Interview 29.7.1987)

Dissatisfaction with the system established by the Allies resulted in concerted party-political attempts to dominate the supervisory councils of the broadcasting stations. The increase in the role of the *Land* parliaments, which were considered to be the legitimate elected representatives of the people, proved a way of bypassing the stipulation that the government should not control broadcasting. This was particularly evident from 1955, when the Federal Republic of Germany gained full sovereignty. The interests of the socially relevant groups in the councils were pushed back in favour of party-political interests. This was particularly the case at WDR and NDR, where the *Land* parliaments officially, but the party-political leaderships in reality, determined the composition of the councils.

The fact that the principle of broadcasting independence has survived owes much to the *Grundgesetz* and the rulings of the Constitutional Court. In the face of concerted attempts to undermine the independence of broadcasting, Article 5 of the *Grundgesetz* has provided a clear definition of the role of broadcasting in society. Even with the advent of commercial broadcasting, the principles of

freedom of information and opinion still hold true, and have to be given priority over commercial considerations and the interests of the state.

### **Notes**

1. The term *Regal* refers to concessions formally granted by German rulers to individuals to run monopolies, like the customs service and postal services (see Sandford, 1976, p.63; Lerg, 1980, p.29).

2. The nine regional broadcasting companies in the Weimar Republic were *Funkstunde AG Berlin*; *Ostmarken-Rundfunk AG Königsberg*; *Nordische Rundfunk AG Hamburg*; *Mitteldeutsche Rundfunk AG Leipzig*; *Schlesische Funkstunde AG Breslau*; *Westdeutsche Funkstunde AG Münster*; *Deutsche Stunde in Bayern GmbH in München*; *Südwestdeutsche Rundfunkdienst AG Frankfurt am Main*; *Süddeutsche Rundfunk AG Stuttgart*.

### CHAPTER THREE

#### THE LONG ROAD TOWARDS A DUAL SYSTEM OF PUBLIC AND PRIVATE BROADCASTING

There are two strands in the factors determining public broadcasting's future in a dual system of private and public broadcasting. First there are those determinants on which public service broadcasters have little influence (see Läßle, 1984, p.8). The federal states, the *Länder*, decide the organisational framework in which broadcasting is to function. Economically, the stations are dependent on licence fee income determined by the *Länder*, and on advertising income determined by the market. Second, there are measures that the stations themselves can undertake in order to safeguard their future. However, any financial, programme policy, or expansionary measures undertaken by them are, to a large degree, determined and shaped by political, and economic factors outside their general sphere of influence.

The emergence of a dual system of private and public broadcasting has been made possible by the introduction of cable and satellite, and the use of recently found local terrestrial frequencies. Commercial competition is, therefore, no longer a theoretical possibility involving matters of principle, but a reality, which first came about on 1st January 1984, with the inauguration of a cable pilot project in Ludwigshafen. Here a distinction has to be made between technology and content. As Johannes Kreile points out: "In Wirklichkeit sind

Kabel- und Satellitenfernsehen jedoch nur Erscheinungsformen des alten Mediums Rundfunk, nur im Gewande der neuen Technik" (1986, p.3).

This chapter focuses on the political events surrounding the introduction of a dual order, and in particular, *Länder* attempts to reach an inter-*Land* agreement on the reorganisation of the broadcasting system. These sought to guarantee the further existence of ARD and ZDF, while at the same time ensuring the right conditions for private broadcasting to thrive. The lengthy disputes surrounding the extent to which public broadcasting's existence should be guaranteed, revealed the degree to which public broadcasting is dependent on the *Länder*. They also provided a clear indication of the polarisation of viewpoints existing between the Christian Democrats (CDU) and their allies from Bavaria, the CSU, who support the introduction of private broadcasting, and the Social Democrats (SPD), who are ideologically opposed to private broadcasting. The process of negotiation imposed severe strains on the federal system of media policy-making, which requires compromise between all the *Länder* regardless of their different party political leaderships. When political agreement seemed almost impossible, it was the Constitutional Court, as so often in the past, which brought clarity by reaffirming the constitutional principles which have guided broadcasting policy from the start. In making its judgement the Court took account of new developments in broadcasting, and provided a constitutional framework in which the dual system can operate. The chapter ends with an account of the Constitutional Court's judgment of June 1987, because it represents a resolution of public broadcasting's



public role within a dual system, and also sets pointers for the future development of broadcasting in West Germany generally.

### 3.1 Stagnation or development? Public broadcasting's demands for continued support within a dual system of broadcasting

Under the threat of commercial competition, the public broadcasters set out their demands for continued existence within a dual system. A declaration by the ARD *Hauptversammlung* on 30th November 1983 constituted the conclusion of a process of internal discussion on their future role within a competitive environment (*Stuttgarter Erklärung der ARD zur Medienpolitik*, in MP 11/1983, p.801; see also Läßle, 1984, p.8). Here it was stated:

Der öffentlich-rechtliche Rundfunk ist die unersetzbare Organisationsform des Rundfunks für alle. Sein Bestand ist jedoch nur gesichert, wenn ihm programmlich, technisch und wirtschaftlich auch eine Funktions- und Entwicklungsgarantie gegeben wird. (p.801)

The demand for a guarantee of function and further development was to be repeated constantly throughout *Länder* negotiations on the dual system of broadcasting. The declaration concluded that such a guarantee should also include long-term financial security from the licence fee and advertising, and priority access to all new technological developments (p.801). It was argued that restriction to existing technologies and channels contradicted the obligation to act as a "Rundfunk für alle", and thus ran counter to the public interest (p.801). A guarantee of function and further development was justified in the declaration by reference to the obligations of public

broadcasting, its integrative role in providing access to various groups and institutions in its supervisory bodies, and its ability to cater for both minorities and majorities of interest (p.801). It was argued that broadcasting could not be left to the market alone, and that public service broadcasting had to be allowed to continue its "kulturelle Aufgabe" (p.801). The declaration was clearly guided by the fear that once private broadcasting was allowed, public broadcasting would be left to stagnate, or worse, be restricted to the provision of unprofitable minority programmes, leaving popular mass programming to commercial channels.

Similar demands had been put forward a month earlier by the chairmen of the ARD supervisory committees (*Erklärung der Gremienvorsitzenden der ARD vom 19.10.1983 zur Position der öffentlich-rechtlichen Rundfunkanstalten in der künftigen Medienlandschaft*, in MP 11/1983, pp.802-803). The emphasis here was clearly placed on a guarantee of function and further development, in addition to a guarantee of existence. The chairmen stated:

Allzuleicht würde die Verkürzung auf eine Bestandsgarantie am Ende zu einer Aufrechterhaltung eines formalen Gehäuses führen, das schließlich sich selbst ad absurdum führt, da es nicht mehr akzeptanzfähig ausgefüllt werden kann. Die bloße Fortexistenz öffentlich-rechtlicher Rundfunkanstalten kann und darf nicht unser Anliegen sein. Die Programmaufgabe der öffentlich-rechtlichen Rundfunkanstalten ist dynamisch zu verstehen. (p.802)

Both declarations, and subsequent statements, from the public broadcasters showed a unified purpose in achieving equality of opportunity with private broadcasting in terms of access to the new technologies, financial support, and expansion into new programme

areas. Implicit in both statements was the supposition that public broadcasting was infinitely superior to anything that commercial broadcasting could offer. This superiority was grounded on public broadcasting's legally defined obligations to provide balanced output for both minorities and majorities, and its commitment to the public interest, rather than to profit. This notion of superiority formed the main justification for the demand of a guarantee of existence, function and further development.

### 3.2 Previous attempts to introduce private broadcasting

Pressure to introduce private broadcasting to West Germany and break the dominance of public service broadcasting is not a recent phenomenon, and can be traced back to the 1950s (see Wolf Thomas, 1976, pp.342-356; Montag, 1978, pp.76pp; Gottberg, 1979, pp.177pp). The most significant attempts to introduce private broadcasting are illustrated here, in order to give some idea of the motives behind these attempts, and the reasons why they were not successful.

The first major attempt to introduce private broadcasting began in the early 1950s. Chancellor Konrad Adenauer (CDU) was dissatisfied with the broadcasting system established by the Allies, and was intent on extending central government control and influence on broadcasting at the expense of both the *Länder* and the public broadcasters (see Gottberg, 1979, p.177). He believed that NWDR, in particular, had been established as part of a conspiracy by the British Labour government, and was therefore ideologically suspect (Bausch, Interview, 29.7.87;

Steininger, 1975, p.343). However, Adenauer found that his plans were initially obstructed, because West Germany did not achieve full sovereignty from the Allies until 5th May 1955 (Bausch, Interview, 29.7.87; Montag, 1978, p.37).

In 1957, ARD applied to the Ministry of Posts for a licence to run a second television service, but the application was rejected, arousing suspicions that central government was considering a private service (Montag, 1978, p.93). Central government's attempts to negotiate with the *Länder* for more influence over broadcasting failed because the *Länder* were wary about relinquishing any control over broadcasting policy (see Gottberg, 1979, pp.180-183). As negotiations with the *Länder* were bearing no fruit, central government introduced draft legislation on 30th September 1959, which foresaw the establishment of a public station, *Deutschland-Fernsehen*, which would entrust programming to private companies (Montag, 1978, pp.94-95). The federal parliament in Bonn approved those parts of the law which set up the external broadcasting services, DLF and DW, but delayed sanctioning the *Deutschland-Fernsehen* until central government and the *Länder* had reached a negotiated compromise (Montag, 1978, p.95). Frustrated by both the *Länder* and the *Bundestag*, Adenauer applied his own solution. On 25th July 1960, Adenauer and the Minister of Justice, Fritz Schäffer, who was acting on behalf of the *Länder*, but without their consent, signed an agreement establishing the *Deutschland-Fernsehen GmbH* (DFG), a private company owned by both the *Länder* and central government (Gottberg, 1979, pp.238-239). When the *Länder* refused to take up their 49% share in the DFG, ownership of the

company passed into the hands of central government (Montag, 1978, p.95).

Central government's motives were primarily political, with commercial considerations playing a secondary role (see Gottberg, 1979, p.226). Harald von Gottberg argues that the initiative for private broadcasting would probably never have started had the *Länder* and the broadcasting stations given in to central government's demands for more influence over broadcasting. Helga Montag, too, argues that political motives were dominant, but recognises that private broadcasting fitted in with the ideology of the CDU/CSU. She writes:

Es ging darum, den Einfluß der Bundesregierung auf das Fernsehen zu vergrößern. Der Gedanke, Privatinitiative dabei einzuschalten, entsprach den gesellschaftspolitischen Vorstellungen der CDU/CSU und ihrem Bemühen, die freie wirtschaftliche Betätigung zu fördern. (1978, p.101)

The DFG itself would not have produced any programmes, but would have entrusted production to the *Freies Fernseh GmbH* (FFG), a private television company, founded on 5th December 1958 by press, publishing, and business interests (see Gottberg, 1979, pp.201-219). Those involved in the FFG drew their inspiration from the success of commercial television in the United Kingdom (see Montag, 1978, p.84). However, unlike Britain, where commercial television involves a number of regional ITV companies independent of government, the FFG alone would have provided programmes, subject to the influence of central government (Gottberg, 1979, p.195). Without public knowledge, central government had entrusted the FFG with the preparations for the second

television channel in December 1959, and had agreed to act as a guarantor for any loans the FFG secured (Montag, 1978, p.112).

Adenauer's plans were halted by the first television judgement of the Constitutional Court on 28th February 1961, referred to in the preceding chapter (in Lehr & Berg, 1971, pp.221-259). This confirmed *Länder* jurisdiction over broadcasting policy, and the independence of broadcasting from the state. It effectively put an end to further attempts by central government to impose its will directly on broadcasting. Private broadcasting was not forbidden by the Court, but was required to fulfil the same requirements of programme range and internal pluralist supervision as public broadcasting. The FFG was disbanded, and the *Länder* took the opportunity to fulfil public expectations of a second television service with the establishment of ZDF by inter-Land agreement in June 1961.

Another major attempt to break the hold of public service broadcasting was linked to press concern about the inequality of competition between broadcasting and the press, especially in the acquisition of advertising (see Bausch, 1979, p.594). The press case was taken up by the organisation representing the newspaper publishers, the Bund Deutscher Zeitungsverleger (BDZV). It was argued that public broadcasting's monopoly of television advertising conflicted with its cultural obligations, and endangered the economic base of the print sector (see Montag, 1978, p.125pp). In order to investigate the substance of these complaints, central government set up an independent commission on 29th April 1964, the *Kommission zur*

*Untersuchung der Wettbewerbsgleichheit von Presse, Funk/Fernsehen und Film*, commonly called the *Michel-Kommission* after its chairman, Elmar Michel (see Bausch, 1979, p.595).

In the meantime, the BDZV turned its attention to ZDF, which was undergoing a financial crisis (Gottberg, 1979, p.305). On 27th November 1964 the BDZV published a plan to take over production and advertising at ZDF by establishing a press-owned company, the *Presse-Fernsehen-AG* (see Montag, 1978, pp.142pp; Bausch, 1979, p.596). It was proposed that ARD should stop advertising, and that ZDF should stop receiving licence fee support (see Gottberg, 1979, p.303). The *Presse-Fernsehen-AG* would be funded by advertising, out of which it would finance ZDF (see Montag, 1978, p.143). The ZDF inter-Land agreement would have remained in force. However, this solution would have resulted in the dominance of one group, the press, and a decrease in responsibility for both the *Intendant* and the *Fernsehrat* (see Gottberg, 1979, pp.317-318). It would almost certainly have led to a Constitutional Court ruling. The *Länder* prime ministers therefore rejected the proposal on constitutional and financial grounds (see Montag, 1978, p.148; Bausch, 1979, p.596).

Having failed to secure press participation in ZDF, and finding themselves excluded from the third television channels which the *Länder* had determined should be awarded to the ARD stations, the newspaper publishers sought to gain political support for a ban on advertising on ARD and ZDF. A draft law was introduced to the *Bundestag* by the CDU and the FDP in March 1965 (see Bausch, 1979,

p.596). It failed to be adopted due to lack of time, but was probably unconstitutional, because it interfered with *Länder* jurisdiction over broadcasting policy (see Gottberg, 1979, pp.322-323).

The press case was ultimately weakened by the publication of the *Michel-Kommission* report in September 1967. This dismissed the accusation of unfair economic competition between the press and broadcasting, the central argument on which the press had based its case (Montag, 1978, p.151; Bausch 1979, p.597). According to the report, the relationship between the press and broadcasting was complementary, not substitutive (see Montag, 1978, p.152). The Commission expressed doubts about press involvement in television advertising, and television in general. It concluded that television, if run by the press, might result in a press monopoly of the advertising market, and a press monopoly of public opinion, and this was incompatible with constitutional demands (see Bausch, 1979, p.597). The findings of the *Michel-Kommission* were backed up by a further commission set up by central government to examine press concentration. The *Kommission zur Untersuchung der Gefährdung der wirtschaftlichen Existenz von Presseunternehmen und der Folgen der Konzentration für die Meinungsfreiheit in der Bundesrepublik*, commonly called the *Günther-Kommission*, after its chairman, Eberhard Günther, reported in June 1968. It revealed the extent of press concentration, and underlined the role of public broadcasting as a counterweight to the dominance of large publishing concerns, and as an important contributor to the formation of public opinion (see Montag, 1978, p.156).



A further attempt to introduce private broadcasting was stopped by the Federal Administrative Court on 10th December 1971 (*Urteil des Bundesverwaltungsgerichts zur Frage der Zulassung einer juristischen Person des bürgerlichen Rechts zum Ausstrahlen von Fernsehsendungen im Lande Berlin*, in *ARD Jahrbuch*, 1972, pp.295-304). A group of newspaper publishers from West Berlin, who had formed a private company, the *Fernsehgesellschaft Berliner Tageszeitungen mbH* (FBT), appealed to the Court, because the West Berlin Senate refused to grant FBT a broadcasting licence (see Montag, 1978, pp.157-160). The Court concluded that it was not unconstitutional for private interests to be excluded from broadcasting (1972, p.295). The Court stated that even if the lack of available frequencies was overcome, the interests of all groups in society had to be taken into account (1972, p.301). It was not enough just to ensure the availability of frequencies, because socially relevant groups had to be in a position to use these "faktisch" (1972, p.301). In the Court's view this would only happen if groups had access to sufficient funds (1972, p.301). It therefore concluded that: "Weder die Zahl der zur Verfügung stehenden Frequenzen noch die finanzielle Lage ermöglichen zur Zeit ein freies Spiel der Kräfte im Fernseh-/Rundfunkbereich" (1972, p.295). Unlike the Constitutional Court, the Administrative Court can only refer to specific cases, but by blocking the Berlin newspaper publishers, it had ensured that any future attempts to introduce private broadcasting would have to be decided in the Constitutional Court, as commercial interests had exhausted all other legal avenues.

Further initiatives to introduce private broadcasting occurred in the Saarland and Bavaria. Attempts by the Bavarian CSU to allow private broadcasting, and to strengthen the CSU's hold over BR by increasing state and parliamentary representation in BR's supervisory committees, were encountered by a citizens' committee, the *Bürgerkomitee Rundfunkfreiheit* (Bausch, 1979, p.598). With the aid of a public petition and a citizens' decision, the committee was able to secure a change in the Bavarian constitution in 1973 (Bausch, 1979, p.598). The new clause 111a stipulated that, "Rundfunk wird in öffentlicher Verantwortung und öffentlich-rechtlicher Trägerschaft betrieben" (cit. in Bausch, 1979, p.598). According to Gottberg, this attempt to introduce private broadcasting was secondary to the CSU's aim of gaining more control over broadcasting (1979, p.367). In spite of the new clause in the Bavarian constitution, private broadcasting was still possible, because the clause only stipulated that the provision of broadcasting should be a public responsibility, not specifically a responsibility borne by a public broadcasting station (see Gottberg, 1979, p.446).

In the Saarland, a private company, composed mainly of press interests, the *Freie Rundfunk AG* (FRAG), tried to activate a clause in the Saarland broadcasting law which allowed private broadcasting (see Montag, 1978, pp.161-171). These plans were dashed by the Constitutional Court ruling of 1981, referred to in the previous chapter, on the grounds that the law did not offer sufficient safeguards to guarantee broadcasting independence (in Ring, 1981, A-III 3, pp.1-25).

In North Germany, too, there were attempts to break the dominance of public service broadcasting. On 13th July 1977, Prime Minister Gerhard Stoltenberg (CDU) of Schleswig-Holstein, announced that he would be cancelling the NDR inter-Land agreement, because of NDR's lack of programme balance, its precarious financial situation, and its lack of coverage for regional issues (see Bausch, 1980, p.941). Stoltenberg was joined in his attacks by Prime Minister Ernst Albrecht (CDU) of Lower Saxony, who recognised an opportunity to break up NDR and introduce private broadcasting (see Bausch, 1980, p.952). In November 1979 Lower Saxony and Schleswig-Holstein signed an agreement setting up their own public station, thereby excluding the third partner in NDR, the SPD Land of Hamburg (see Bausch, 1980, p.957). The disintegration of NDR was only stopped by the intervention of the Federal Administrative Court on 28th May 1980. The Court ruled that NDR must continue as a station serving Lower Saxony and Hamburg, even if Schleswig-Holstein decided to opt out (see Bausch, 1980, p.960; *Bundesverwaltungsgerichtsurteil zum Nordeutschen Rundfunk*, in MP 7/1980, pp.503-514). Lower Saxony had not cancelled the NDR-agreement in time, and would have had to continue its participation in NDR together with Hamburg. In a subsequent re-working of the NDR inter-Land agreement, Schleswig-Holstein and Lower Saxony agreed to continue to support NDR, on condition that it lost its monopoly in 1983, thus opening up the way for private competition (see *Der Spiegel*, 23/1983, p.26).

These examples of attempts to break the monopoly of the public service ethos and introduce commercial broadcasting, are by no means

exhaustive, but they help to illustrate the continuity of the campaign and the stability of the groups and arguments involved (see Montag, 1978). These groups include the press, which has always argued that it must have access to broadcasting, in order to secure its financial survival. Others interested in the introduction of commercial broadcasting include advertisers, who want a more liberal advertising climate. The CDU/CSU are the natural allies of these private interests because, of their commitment to private enterprise. However, the CDU/CSU's main motive for introducing private broadcasting would appear to be their distrust of a system, which they regard as not being conducive to their political interests. According to Gottberg, these past attempts to introduce private broadcasting, represented "unter der Losung des Wortes Freiheit, der Versuch. . .die Zugangsmöglichkeiten zu dem Medium zugunsten einiger mächtiger Interessengruppen zu verändern" (1979, p.3).

The reasons for the failure to establish private broadcasting are to be found in the lack of sufficient technical capacity, and in the rulings of the courts, and above all the Constitutional Court. Private broadcasting was never forbidden by the Constitutional Court, but its requirement in 1961, that private broadcasting be organised in such a way that the plurality of opinion was reflected in its internal supervisory structures and in its programming, proved to be too high a hurdle for commercial aspirants (Bausch, Interview, 29.7.1987).

### 3.3 Cable - a means of introducing private broadcasting

The traditional argument against private broadcasting, first proposed by the Constitutional Court in 1961, that lack of frequencies and prohibitive costs prevented a multiplicity of programme providers, was no longer possible with the emergence of cable. Cable television, which allows the distribution of many broadcasting channels into the home, gave the discussion about private television a new impetus in the 1970s.

In September 1973, the federal minister for research and technology, and posts and telecommunications, Horst Ehmke (SPD), announced the setting up a commission to investigate advances in communications technology (see Ehmke, 1973, pp.433-443; Sura, 1987, p.9). The commission was supposed to put forward proposals for "ein wirtschaftlich vernünftiger und gesellschaftlich wünschenswerter Ausbau des Telekommunikations-systems" (cit. in Reichardt, 1980, p.10). Membership was drawn from the *Länder*, academe, central government, local government, the political parties, the trade unions, the press, broadcasting, commerce and industry. The *Kommission für den Ausbau des technischen Kommunikationssysteme* (KtK) presented its report to the federal government on 27th January 1976 (see KtK, 1976, pp.4-38). As it had been initiated by central government, it was cautious about making any statements on media policy, as this is an area regulated by the *Länder* (see Lange, 1976, p.93). It therefore concentrated its enquiries on network provision, on aspects of technology, finance and public demand.

Against original expectations cable television took up only a small part of the final report. The KtK concluded that broadband cable had been overestimated in public debate, and that many new forms of telecommunication could just as easily be accommodated on existing narrowband networks, such as the telephone system (KtK, 1976, pp.5-11). In making its recommendations on broadband cable, the KtK drew a distinction between those systems best suited for television distribution (*Breitbandverteilnetze*), and those suited to both mass and individual communication, similar in structure to the telephone network (*Breitbandvermittlungsnetze*) (KtK, 1976, p.11; see Mettler-Meibom, 1983, p.25). The latter was felt to require further research and development before high levels of investment could be justified (KtK, 1976, pp.15-16).

The major significance of the report lay in its statements about tree-and-branch cable systems, *Breitbandverteilnetze*. The KtK stated

Da die Errichtung eines bundesweiten Breitbandverteilnetzes wegen des Fehlens eines ausgeprägten und drängenden Bedarfs heute noch nicht empfohlen werden kann, und da neue Inhalte - auch solche, die nicht Rundfunk sind - erst der Entwicklung bedürfen, werden zunächst *Pilotprojekte* (Modellversuche) mit Breitbandkabelsystemen empfohlen. (KtK, 1976, p.13)

The KtK had found neither a distinct demand for more TV channels, nor a strong identifiable need for local broadcasting, which would have justified heavy public investment in tree-and-branch cable systems (KtK, 1976, p.12, p.30). Cable pilot projects of five years' duration, provided a means of answering questions about future demand and individual needs, which could not be forecast at this stage. Recognising that the projects would play a vital role in assessing

public acceptance and economic viability, the KtK recommended that cable services should be offered within "eine möglichst vielfältige Versuchsordnung", subject to a decision by the *Länder* (KtK, 1976, p.15). This would appear to imply services other than public service broadcasting, although the question of who should provide cable programmes was left open.

Publication of the KtK report led to further discussion about private television. Hartmut Reichardt claims that rather than contributing to debate about the new media, the KtK opened up a discussion about the desirability of public service broadcasting, "eine Forderung nach einem gänzlich anderen Rundfunksystem für diese Republik" (1980, p.10). The CDU/CSU insisted that private programme providers should be allowed to participate in the pilot projects (*CDU/CSU zum Bericht der Kommission für den Ausbau des technischen Kommunikationssystems*, in MP 2/1976, pp.72-74, here p.73). The SPD, however, maintained that the pilot projects should be undertaken by the public service stations (*SPD: publizistische Gewaltenteilung auch bei Kabelfernsehen*, in MP 2/1976, pp.74-75).

On 11th May 1978, the *Länder* agreed to implement four pilot projects in Munich, Ludwigshafen-Mannheim, Cologne or Wuppertal, and West Berlin (*Beschluß der Ministerpräsidenten der Länder betr. Kabelfernsehen und Breitbandkommunikation*, in Bauer, Detjen, Müller Römer, 18.1.1). In December 1978 North Rhine-Westphalia decided to replace Cologne or Wuppertal with Dortmund. At the end of 1979 Baden-Württemberg decided to drop out, leaving the Rhineland-

Palatinate to continue alone in Ludwigshafen (see Sura, 1977, p.10). The *Länder* agreed to allow private programme provision on the basis of a model submitted by the Rhineland-Palatinate. It was also stated that "während der Versuchsphase weitere Pilotprojekte nur in den genannten Organisationsform durchgeführt werden sollen" (in Bauer, Detjen, Müller Römer, 18.1.1). The use of the phrase "nur in den genannten Organisationsformen" was vague enough to be interpreted more broadly at a later stage.

On 14th November 1980, the *Länder* agreed that costs of DM140 million for all four pilot projects, should be raised from the licence fee (*Beschluß der Ministerpräsidenten der Länder betr. Gemeinschaftliche Finanzierung der Pilotprojekte "Kabelfernsehen" durch die Länder*, in Bauer, Detjen, Müller Römer, 18.1.2). This decision was incorporated in to the licence fee agreement of 6th July, 1982, which placed a DM0.20 levy on broadcasting licences (*Staatsvertrag über die Höhe der Rundfunkgebühr und zur Änderung des Staatsvertrags über einen Finanzausgleich zwischen den Rundfunkanstalten*, in Bauer, Detjen, Müller Römer, 15.4.2). However, perhaps of most interest is the note added to the 1980 agreement, on the insistence of the Lower Saxony Prime Minister, Ernst Albrecht (CDU). This modified the earlier agreement of 1978, which had stated that further projects should only take place "in den genannten Organisationsformen", by stating that media policy decisions by individual *Länder* outside the pilot projects should not be excluded (in Bauer, Detjen, Müller Römer, 18.1.2).



Delays in implementing the pilot projects, and the intervening struggles about who should be responsible for programming, were accompanied by a decline in the acceptance of their experimental nature. Following the change in 1982 from an SPD/FDP to a CDU/CSU/FDP government in Bonn, the experimental nature of the projects was made superfluous by central government's decision to allow the post office to start a policy of cabling the whole country (see H. Schmidt, 1983, p.844; Scherer, 1985, pp.165-172). Also, the *Länder* decision in 1978 to delay individual *Land* initiatives until the completion of the pilot projects, was rendered void, once individual *Länder* passed legislation allowing private broadcasting on a permanent basis (see Reichardt, 1980, p.10; Schmidt, 1983, p.844).

The first pilot project in Ludwigshafen was hailed as "eine medienpolitische Wende" when it began on 1st January 1984 (see Frenkel, 1984, p.50). The pilot projects ran for three years, but were a disappointment to those who had expected a rush of public interest. The limited transmission areas of Ludwigshafen, Munich, and West Berlin, proved too small to attract advertising support for local private broadcasting (see *Kabel-Projekte: Urknall ohne Echo*, *Wirtschaftswoche*, 14.8.1987, p.60). After three years, only 61,000 households were connected to cable in Ludwigshafen out of 180,000 households passed (*Wirtschaftswoche*, 14.8.1987., p.60; "Es war der Schlüssel zum freien Markt", *FR*, 5.12.1986). Dortmund, the only pilot project run by a public station, WDR, proved an exception, because WDR's local offerings were not dependent on advertising. However, the exclusivity of public broadcasting provision in Dortmund, was broken

even before the project commenced on 1st June 1985, because the North Rhine-Westphalian government passed a provisional law allowing satellite channels from other *Länder* to be fed into North Rhine-Westphalian cable networks (*Gesetz über die vorläufige Weiterverbreitung von Rundfunkprogrammen in Kabelanlagen*, in MPD II/1985, pp.103-4). In Munich, public interest was very disappointing, and the project only attracted 7,000 households before it was prematurely terminated in December 1985 after 21 months (see *Wirtschaftswoche*, 14.8.1987). New Bavarian legislation, passed on 15th December 1984, allowed satellite channels previously only available in Munich, to be fed into all Bavarian cable networks (*Gesetz über die Erprobung und Entwicklung neuer Rundfunkangebote und anderer Mediendienste in Bayern* MEG in MPD I/1985, pp.1-10). Responsibility for private channels, passed from BR and ZDF to a new public authority, the *Bayerische Landeszentrale für neue Medien* (BLM). This complied with Article 111a of the Bavarian constitution, which demands that broadcasting be run as a public responsibility. West Berlin had promised the best chances of success, because 200,000 households were already cabled when the project began on 28th August 1985 (see *Wirtschaftswoche*, 14.8.1987, p.60). However, this was still not enough to attract advertising for local channels, and legislation was amended in March 1986 to allow private terrestrial television and FM radio, in order to attract larger audiences (see *Kabelpilot- und Versuchsgesetz für drahtlosen Rundfunk im Land Berlin vom 27. Juli 1984, in der Fassung vom 27.3.1986*, in Bauer, Detjen, Müller Römer, 18.2.2).

What the pilots did provide was a model for permanent legislation on the introduction of private broadcasting. This was particularly the case of the Rhineland-Palatinate cable pilot law, passed on 4th December 1980 (*Landesgesetz über einen Versuch mit Breitbandkabel*, in MP 12/1980, pp.531-533). This combined elements of external pluralism and internal pluralism. An external supervisory authority, the *Anstalt für Kabelkommunikation* (AKK), with a committee (*Versammlung*) made up of representatives drawn from groups and institutions, was responsible for supervising balance over the totality of channels on offer on cable.

In terms of programming the pilot projects offered very little in terms of new or original content. Apart from access channels and struggling local services, public service channels, both existing and new services, provided the bulk of channels on offer. The pilot projects were seen mainly as a launch pad for national private channels like SAT 1 and RTL Plus. It was also clear that cable alone offered no chance of success for private channels, who have pinned their hopes to local terrestrial frequencies in order to increase their potential audience (see FK, 18.7.1986, pp.1-6). In the final analysis the pilot projects had not stimulated any debate about the economic and social desirability of more broadcasting channels, as originally intended by the KtK. This debate was effectively stifled by other media policy developments, reducing the pilot projects to a means of testing private broadcasting for future national distribution (see Schmidt, 1983, pp.844-5).

### 3.4 Länder initiatives for the introduction of private broadcasting

Any semblance of the experimental character of the pilot projects was nullified by the passage of *Länder* legislation allowing private broadcasting on a permanent basis. The first initiative was taken by Baden-Württemberg in March 1982, with the introduction of a draft law, intended to motivate discussion (*Entwurf für ein Gesetz über die neue Medien - Landesmediengesetz Baden-Württemberg*, in MP 2/82, p.202-209). The first such piece of legislation was passed by Lower Saxony in May 1984 (*Niedersächsisches Landesrundfunkgesetz*, MP 6/1984, pp.486-496). Since this period most of the *Länder* have passed legislation allowing the introduction of private broadcasting (1).

The impetus for the introduction of these laws came from the Constitutional Court judgement of June 1981, described in Chapter 2 (in Ring, 1981, A-III 3, pp.1-25). To reiterate: in this judgement the Court, in recognition of technological progress which allowed a greater number of broadcasting channels, accepted the external pluralistic system, where diversity of opinion and content is judged over a broad range of channels, in addition to the internal pluralistic model, where diversity of opinion and content is achieved in each channel, subject to supervision by internal pluralistic committees. Encouraged by this concession, the CDU/CSU *Länder* set about introducing legislation on private broadcasting, which was markedly less stringent than the legislation governing public broadcasting.

Most legislation opted for the externally pluralistic model (Bavaria, West Berlin, Rhineland-Palatinate) or a system mixing elements of internal and external pluralism (Baden-Württemberg, Lower Saxony, the Saarland, Schleswig-Holstein). In a mixed system each channel must exhibit diversity of opinion, unless there are a sufficient number of programme providers using the same medium, to justify external pluralism. Channels licensed in the SPD *Länder* of Hamburg and North Rhine-Westphalia must be internally pluralistic. In the case of nationally distributed satellite channels these distinctions are academic, as the inter-*Land* agreement (reached in 1987) on the reorganisation of broadcasting, which will be discussed later, foresees internal plurality of opinion in each channel, unless there are three nationally distributed private channels using the same medium (e.g. TV or radio), and run by different programme providers (*Staatsvertrag zur Neuordnung des Rundfunkwesens*, 3.4.1987, in KuR, 25.4.1987, pp.18-26). Only then can there be plurality of opinion judged according to the totality of channels available. If the conditions of external plurality are not met, the programme provider has to institute an internal programme committee to ensure diversity of opinion. In the case of consortia it is sufficient to prevent the influence of those with more than a 50% shareholding by drawing up a contract or a set of rules. Most of the *Land* laws have since been amended to comply with this clause.

In all cases the *Länder* laws established external public authorities, to license and supervise private broadcasting channels. These contain supervisory committees, drawn from groups and

institutions, similar to the *Rundfunkräte* of public broadcasting. Baden-Württemberg, and Berlin, however, have instituted small five-member committees composed of independent individuals acting in an honorary capacity, and appointed by parliament. This is reminiscent of British supervisory practice, and may represent an attempt to break the tradition of supervision by committees drawn from groups and institutions. The laws contain liberal rules on advertising, allowing generally up to 20% of transmission time for advertising and the possibility of commercial breaks in programmes which exceed 60 minutes in duration.

The passage of these laws constituted a definite break with the public service ethos, but initiatives by each *Land* provided no uniform basis for the national distribution of private channels, and no security for private channels which had to take account of different stipulations in each *Land*. For this reason an agreement between all the *Länder* was necessary to prevent "Kleinstaaterei" in broadcasting.

### 3.5 A change in government - a change in policy

The progress achieved by the *Länder* in passing legislation to allow private broadcasting, and the availability of cable, satellite, and local terrestrial frequencies to distribute it, would not have been possible without substantial assistance from the Federal Government in Bonn. A factor which had worked against the establishment of private broadcasting throughout the 1970s, had been the hostile stance assumed by the SDP/FDP coalition, which held power in Bonn from 1969 to 1982.

Although the *Länder* are responsible for formulating broadcasting policy, central government holds the trump card, because it is responsible for telecommunications policy, as carried out by the Federal Post Office. As the introduction of private television was dependent on a cable and satellite policy undertaken by central government, efforts to establish private broadcasting had been effectively blocked.

The SPD/FDP coalition's stance was firmly put in a statement by Chancellor Schmidt following the SPD's victory in the 1980 election:

Die sozial-liberale Koalition wird - wie früher - auch in Zukunft für den privatrechtlichen Charakter der Presse und für den öffentlich-rechtlichen Charakter der elektronischen Medien, d.h. des Rundfunks und Fernsehens, eintreten. Dieses historisch gewachsene publizistische Gleichgewicht gehörte einmal zum Grundkonsens aller demokratischen Parteien in der Bundesrepublik. Es wäre gut, wenn die Parteien des Bundestages zu diesem Konsensus zurückkehren könnten. (*Medien in der Regierungserklärung des Bundeskanzlers*, in MP 12/80, p.844)

This strong aversion to commercial broadcasting was a reflection of the Chancellor's "persönliche erhebliche Skepsis gegenüber der zunehmenden Fernseh-Berieselung der Heranwachsenden und gegenüber der Beeinträchtigung des Familienlebens durch die elektronische Medien" (p.844).

In this respect, the Chancellor, who was adjudged to be on the right wing of his party, could count on total party support. More pragmatically, however, it was recognised that private television might upset the political balance, as public service broadcasting was generally considered to be fairer in its coverage of the SPD than the

predominantly conservative press. This fear was summed up by Egon Bahr, the SPD chief whip, in December 1979:

Wir werden aufpassen müssen, daß hier nicht eine Situation geschaffen wird, durch die de facto die Situation der gedruckten veröffentlichten Meinung auf dem Bildschirm übertragen wird. Dann hätte nämlich die SPD bei den Wahlen wahrscheinlich keine Chance mehr. (cit. in Barsig, 1981, p.188)

However, even as the government in Bonn was holding firm in its opposition to private broadcasting, the foundations for its eventual introduction were being laid. On the one hand technological developments were occurring which could not be ignored, even by a government opposed to commercial broadcasting. Sanctioning cable would ultimately result in demands for private television, but ignoring developments in the new media would affect West Germany's future as an industrial nation. This paradox was revealed in 1979 when Post Minister Gscheidle's decision to cable eleven cities to secure jobs and future investment possibilities for the Federal Post Office forced the government to act to prevent the creation of spare capacity, which would have resulted in calls for private broadcasting (see Kremerdorf, 1983, p.20). The plan was halted by the government in September 1979, when it was stated that the Post Office would not prejudice the results of the cable pilot projects by creating spare capacity for extra channels (*Medienpolitischer Beschluß des Bundeskabinetts vom 26.9.1979*, in MP 10/79, pp.719). Instead, the SPD/FDP government decided in April 1981 to pursue a policy of fibre optic cabling, which is more suited to individual and business communications, rather than coaxial cable tree and branch systems, which are best suited for television (see *Medienpolitische Entschlüsse der Bundesregierung*,



in MP 6/1981, p.444). A decision for this type of network would have made a tree and branch system, distributing predominantly television, less of a possibility (see Kremersdorf, 1983, p.24).

The government's attempts to stifle cable, were contradicted in its policy concerning direct broadcast satellites (DBS), which allow individual reception of television programmes by small dish antennae. In April 1980, the government signed an agreement with France for the joint construction of a DBS satellite system for both France and West Germany (in Ring, 1981, F II.2). The German DBS system would be called TV-Sat. In spite of its hostility to private broadcasting, the SPD/FDP coalition in Bonn was encouraging developments and a technological capacity which would later be used as a pretext to introduce private broadcasting channels.

The turning point came in September 1982 with a new CDU/CSU/FDP coalition government in Bonn, which was intent on bringing about change and providing the technological basis for the introduction of private broadcasting. This was firmly stated in Chancellor Kohl's statement to the *Bundestag* on 13th October 1982:

Die politische Blockade des Ausbaus moderner Kommunikations-technologien wird beendet. Die Bundesregierung wird im Zusammenwirken mit den Bundesländern die Medienordnung erneuern. So sollen die Meinungsvielfalt erhöht, die Urteilskraft des Bürgers herausgefordert und der Informations- und Meinungsaustausch über nationale Grenzen hinaus gestärkt werden. (cit. in MP 10/1982, p.679)

The new Minister of Posts, Christian Schwarz-Schilling, reinforced central government's commitment to the introduction of private

broadcasting, by announcing that the Federal Post Office would be investing DM1 billion a year into coaxial cable from 1983 (see *Spiegel-Gespräch*, 43/1982, p.68). What had proved to be a major barrier to private broadcasting in the past, a lack of frequencies, was lifted.

### 3.6 The search for a solution in a dual system of broadcasting

After years of political wrangling about the desirability of cable and satellite, and especially private broadcasting, the conditions necessary to break the public service monopoly had been achieved. On a technological level, cable and satellite existed to distribute additional broadcasting channels. On a political level, the principle of private broadcasting had been resolved by the election of a government in Bonn which had pledged its support for private broadcasting by initiating an extensive cabling policy.

At a constitutional level the Constitutional Court had modified its demands in 1981, so giving the *Länder* greater legislative freedom to introduce alternative forms of broadcasting. However, at *Land* level there were major problems to be resolved. These problems stemmed from the CDU/CSU's support of private broadcasting, and the opposition of the SPD *Länder*. They were brought to a head by a recognition of the fact that satellite technology allowed the national distribution of additional channels into cable systems, or in the case of DBS, allowed individual reception. In the interest of national uniformity a compromise by the *Länder* on the co-existence of private and public

broadcasting was imperative, if a situation was to be avoided where each *Land* pursued its own policy. However, negotiations for an inter-*Land* agreement on the reorganisation of broadcasting have revealed the fragility of the federal system of media policy-making. Negotiations begun in June 1981 were concluded in 1987 only after countless failed attempts at agreement.

### 3.6.1 Negotiations commence

On 4th June 1981 the *Länder* prime ministers dealt with the issue of satellite broadcasting for the first time, in reaction to a joint plan by the BDZV and RTL, the Luxembourg commercial broadcasting company, to beam a private satellite channel into West Germany from Luxembourg (see *Beschluß der Ministerpräsidenten der Länder betreffend der Beteiligung der deutschen Zeitungsverleger an europäischen Rundfunksatellitenprogrammen vom 4. Juni 1981*, in Ring, 1981, F.II.1.1). It was agreed that satellite broadcasting fell under the jurisdiction of the *Länder*. The prime ministers also expressed their willingness to solve the issue of satellite broadcasting together. With a joint solution in mind, they asked the *Länder* broadcasting experts to prepare a report on satellite broadcasting.

The report was presented over a year later at the prime ministers' annual meeting, held in Travemünde between the 20th and 22nd October 1982 (see *Bericht über Fragen des Satelliten-Rundfunks*, in MP 12/1982, pp.776-784). It examined satellite technology, foreign initiatives, programming, and the possibilities and limitations of satellite

broadcasting in West Germany. The report's recommendations concentrated on the two year pre-operational phase of the DBS satellite, TV-Sat. TV-Sat entered its operational phase, once a second reserve satellite had been launched. The report recommended that two transponders on the pre-operational satellite be used for two television channels, and one for the transmission of 16 digital radio channels (p.782). It proposed that ARD and ZDF's existing services be placed on the two television transponders, but that this should not exclude the possibility of cooperation with third parties on the basis of existing public service broadcasting legislation (p.782). This solution coincided with a proposal put forward by ARD and ZDF (p.782-783). For public broadcasting this solution would have been ideal, because the public stations would have retained ultimate responsibility for programme content.

The prime ministers took note of the report, and agreed that TV-Sat should be used for the transmission of two television channels and 16 radio channels in the pre-operational phase (*Vorläufiges Ergebnisprotokoll*, in MP 12/82, p.776). However, the transmission of ARD and ZDF with the possibility of third party cooperation was only considered as "ein möglicher Weg" (p.776). A final decision on who should use TV-Sat was delayed, pending talks between the broadcasting commission of the *Länder*, ARD and ZDF, and interested third parties (p.777).

Negotiations on the possibility of cooperation between the public broadcasters and other parties, including the press, took place in the

first half of 1983 (see Kreile, 1986, p.57). However, differences emerged about the extent to which private interests should be allowed to carry responsibility for their own programmes, and whether they should be allowed to acquire their own advertising (see Groß, 1986, p.52; Kreile, 1986, p.60). This was the solution favoured by the BDZV, but its implementation would have required changes to existing broadcasting legislation, which at this time did not permit autonomous private broadcasting (Groß, 1986, p.52). ARD and ZDF were naturally opposed to this solution, and proposed instead that advertising on their terrestrial services be increased by five minutes to 25 minutes a day, in order to use the extra advertising revenue for programme innovations on TV-Sat (see Kreile, 1986, p.60).

The difficulties in achieving a cooperative solution, which maintained public broadcasting's overall responsibility, and satisfied the broader ambitions of potential commercial interests, pushed the possibilities of telecommunications satellites to the forefront of discussions (see Groß, 1986, p. 53). Telecommunications satellites are less powerful than DBS and are not generally used for individual reception of broadcast channels because they require large reception antennae. Instead, programmes are fed into cable systems, but dependence on cable is offset by lower costs and a greater number of transponders. A decision by the *Länder* on the use of telecommunications satellites had been forced by the decision of the Minister of Posts, Christian Schwarz-Schilling (CDU) to rent two transponders on ECS 1, a telecommunications satellite operated by Eutelsat, a non-profit making cooperative with membership drawn from

European PTTs (see von Sell, 1984, p.186). According to Groß, Schwarz-Schilling and some of the CDU/CSU prime ministers were hoping to bypass the need for legislation, by defining transmission via telecommunications satellite as point-to-point communication rather than as broadcasting (Groß, 1986, p.53).

The *Länder* prime ministers discussed telecommunications satellites at a meeting held in Stuttgart from the 19th to 21st October 1983 (see Groß, 1986, pp.53-54). Here it was agreed that the responsibility for regulating any type of satellite broadcasting rested with the *Länder* and not with the Federal Post Office (see Groß, 1986, p.53; Kreile, 1986, p.63). The *Länder* broadcasting commission was asked to work out a concept on the use of telecommunications satellites by 15th December 1983 (see Groß, 1986, p.54). According to Rolf Groß, this decision blocked attempts by individual *Länder* to install national private broadcasting without the agreement of the other *Länder* (1986, p.54). At a meeting of the prime ministers in Bonn on 15th December 1983, no agreement could be reached on a CDU proposal, which envisaged awarding one ECS 1 transponder to a private programme provider, and a further transponder to a public station (see Kreile, 1986, p.66). It was therefore decided to delay further talks until 1984.

### 3.6.2 A compromise in sight - the SPD's change in attitude

A compromise on the national distribution of private channels by satellite seemed possible once the SPD had modified its policy of

hostility towards private broadcasting. This modification of policy was brought about by several factors. As more and more CDU/CSU *Länder* passed legislation permitting private broadcasting, the SPD *Länder* found themselves burdened with a policy which was no longer sustainable. The CDU/CSU's control of central government and the Federal Post Office, and the fact that satellite broadcasting respects neither *Land* nor national borders, made it clear that private broadcasting could no longer be stopped. This had become particularly evident in an episode involving the BDZV's attempt to cooperate with the Luxembourg private broadcaster RTL in the transmission of a satellite television channel from Luxembourg to West Germany (see Groß, 1981, pp.373-382). Additionally, the maintenance of an anti-commercial stance would probably have been difficult to justify to the electorate in SPD *Länder*, if they were denied access to private broadcasting being enjoyed by those living in CDU/CSU *Länder*.

A turnaround amounting to a toleration of private broadcasting occurred on 16th February 1984 with the publication of a policy document worked out by the SPD's media commission (*Medienpolitisches Aktionsprogramm 1984 der SPD-Medienkommission*, in MP 2/1984, pp.149-151). However, the document did not approve of existing developments in broadcasting. The SPD promised to fight the "blinde Modernisierung und Kommerzialisierung des Rundfunkwesens" (p.151). The cable strategy of the Federal Post Office, involving coaxial cable, which is suited to television distribution rather than individual communication, was criticised for being economically unviable and technologically obsolete (p.149). Instead, the SPD supported DBS, which would allow

individual reception by dish antennae throughout the country, unlike cable, which is limited to certain areas (p.150). The distribution of television programmes by telecommunications satellites, which are best suited for cable distribution was deemed "medienpolitisch, wirtschaftlich und technisch. . . fragwürdig" (p.151). In spite of these criticisms, it was recognised that a situation had arisen where total opposition to private broadcasting could no longer be sustained, if the SPD was to continue to have any influence on West Germany's broadcasting future. It was stated that:

Die Nutzung der Satellitentechnik durch unsere Nachbarn, die Versuche zur Fremdkommerzialisierung des deutschen Rundfunkwesens, die politischen Machtverhältnisse im Bund und in der Mehrzahl der Länder, die privatwirtschaftliche Rundfunkveranstalter zulassen wollen, usw., erschweren das Festhalten an einem ausschließlich öffentlich-rechtlich organisierten Rundfunkwesen in der Bundesrepublik und machen es unter Umständen sogar unmöglich. (pp.149-150)

The extent of the SPD's toleration of private broadcasting was linked to several conditions. Primary amongst these was the demand that private broadcasting should be organised on internally pluralistic lines, by exhibiting diversity of opinion in individual channels, and by the representation of groups and institutions in its supervisory bodies (p.150). This demand was caused by distrust of the externally pluralistic model, "da Kommunikationsgerechtigkeit und Meinungsvielfalt durch die Konkurrenz einer Vielzahl von selbständigen Veranstaltern (Außenpluralität) vor allem aus wirtschaftlichen Gründen in überschaubarer Zukunft nicht herstellbar ist" (p.150). Acceptance of private broadcasting was further linked to the imposition of quotas



on domestic production, and the avoidance of concentrated ownership, particularly by the press (p.150, p.151).

Central to the policy document however, were those points relating to public broadcasting. It was stated that:

Die SPD ist zur Weiterentwicklung unseres Rundfunkwesens durch die Zulassung neuer Veranstalter bereit. Bedingung dafür aber ist die Garantie für den Bestand und die Entwicklung der bestehenden öffentlich-rechtlichen Rundfunkanstalten. (p.151)

The demand for a guarantee of existence and further development for public broadcasting included access to the new technologies and secure financial backing (p.151). In the event of inadequate licence fee funding and/or severe competition from private broadcasting, there was a veiled threat to increase the level of advertising in public broadcasting (p.151).

The modification of SPD policy on private broadcasting was not supported by the trade unions, the SPD's traditional allies, who continued to oppose the introduction of private broadcasting (see *Medienpolitische Positionen des Deutschen Gewerkschaftsbundes*, in MP 5/1984, pp.419-425). More seriously, however, the decision to tolerate private broadcasting worked out by the party in Bonn conflicted with the differing standpoints assumed by the SPD *Länder*. For instance, in Hesse the *Land* government was totally opposed to the introduction of private broadcasting into Hessian cable networks (see Hall, 1984). This stance may have been partly coloured by the SPD's dependence on Green Party support in the Hessian *Landtag*. In Hamburg, a more conciliatory approach was adopted in recognition of the fact that two

of West Germany's major publishing groups, the *Axel Springer-Verlag* and *Gruner und Jahr*, are based in Hamburg, and are heavily involved in attempts to establish private broadcasting. It was therefore in Hamburg's interest to satisfy two of its most important industrial concerns, and provide them with an incentive to stay in Hamburg (see Hall, 1984a). This was achieved by the passage of a provisional law in October 1984, which allowed satellite channels to be fed into Hamburg's cable networks (*Gesetz über die vorläufige Weiterverbreitung von Rundfunkprogramme in Kabelanlagen*, in MPD 10a/1984, p.833). The law was criticised as a 'LEX APF', after the private television news company, *Aktuell Presse-Fernsehen*, a consortium involving 165 newspaper publishers, which is based in Hamburg (see Hall, 1984a; FR, 5.10.1984).

The SPD had therefore reached a position where private broadcasting could be tolerated, but there were still many problems and internal divisions to be resolved. The party had spent so long opposing private broadcasting, that it was difficult for it to formulate a credible long-term broadcasting policy.

### 3.6.3 Compromise exposed - the SPD backs down

A compromise between the SPD *Länder* and the CDU/CSU *Länder* on the use of ECS 1 was reached on 23rd February 1984, shortly after the publication of the SPD's new policy document on 16th February (*Gemeinsames Satelliten-Nutzungskonzept der Länder. Vorläufiges Ergebnisprotokoll der Besprechung der Ministerpräsidenten der Länder*,

in MP 2/1984, p.152). Under this agreement the east beam of ECS 1 was awarded to ZDF for the distribution of its planned German-language cultural channel, 3SAT. The SPD *Länder* noted that the AKK (*Anstalt für Kabelkommunikation*), the Ludwigshafen cable authority, would license a programme provider for the west beam of the satellite on behalf of all the *Länder*. It was also agreed that the Intelsat telecommunications satellite, in addition to the transport of private channels, would be used for the transport of ARD's third television channels to West Berlin, and for the distribution of other public service channels. In the interest of equality with ZDF, other public service channels seemed to imply ARD's planned cultural channel, Eins Plus, although this was not specifically mentioned.

Martin Stock writes: "Der kooperative Föderalismus ist Anfang 1984 in ein medienpolitisches Labrynth geraten" (1986a, p.5). The CDU/CSU *Länder* had finally managed to achieve a consensus on the national distribution of commercial satellite channels. In doing this the cable pilot projects, which had been limited in time and scope in order to test the acceptance of cable, had been irretrievably rejected. There was no longer a question mark over the future of cable and satellite broadcasting and its corollary, commercial broadcasting. The only thing which remained to be settled were the details.

Given the content of the SPD policy document of 16th February, it is difficult to understand why the SPD *Länder* allowed the west beam of ECS 1 to be awarded to private broadcasting on the basis of provisional legislation governing the Ludwigshafen cable pilot project.

The consent of the SPD *Länder* can only be explained as a concession in return for the guarantee of existence and further development for public broadcasting, which had been demanded in the SPD policy document on 16th February. However, only the prospect of such a guarantee was mentioned in the prime ministers' agreement:

Die Regierungschefs der Länder beauftragen die Rundfunkkommission der Ministerpräsidenten weiterhin, Grundsätze zur Sicherung des Bestandes und der Weiterentwicklung des öffentlich-rechtlichen Rundfunksystems zu erarbeiten. Dabei soll im Rahmen eines rundfunkrechtlichen Gesamtkonzepts eine technische und finanzielle Garantie für das System öffentlich-rechtlicher Rundfunkanstalten abgegeben werden. (p.152)

On 28th April 1984 the AKK awarded the west beam of ECS 1 to a 21-member consortium, composed of press and business interests, later to become the SAT 1 broadcasting channel. 76 other applications were rejected (see *ECS 1-Westbeam von der Anstalt für Kabelkommunikation vergeben*, MP 3/1984, pp.228-229). The AKK justified its decision by pointing out that the SAT 1 consortium was the only applicant to satisfy technical, organisational, economic, and programme requirements (p.228). The plurality of the consortium was ensured by its diverse membership and its willingness to cooperate with other interested groups (p.228). According to the AKK, it was the only contender to offer scope for local insertions and information programmes in its programme schedule (p.228). Furthermore, two of the consortium's participants, the *Programmgesellschaft für Kabel- und Satellitenrundfunk mbH* (PKS), and the newspaper organisation, *Frankfurter Allgemeine Zeitung* (FAZ), had been successfully involved as programme providers in the Ludwigshafen cable pilot project (p.228).

The consent of the SPD *Länder* to the award of the ECS 1 west beam to a private channel, and the subsequent award of the transponder by the AKK to the SAT 1 consortium, clearly contradicted many of the points in the SPD's policy document of February 1984, which had agreed to tolerate private broadcasting only under certain conditions. The SPD had demanded that private broadcasting be subject to internal plurality, but the Ludwigshafen cable pilot law, on which the award of the transponder was based, operated the externally pluralistic system, by which diversity of opinion is achieved over a range of channels (see Paragraph 18, *Landesgesetz über einen Versuch mit Breitbandkabel vom 4.Dezember 1980*, in Bauer, Detjen, Müller Römer, 18.4.2). Contrary to SPD demands, this law contained no quotas on domestic production. Furthermore, the SAT 1 consortium was dominated by press interests, something the SPD had warned against in its policy document. The publishing houses of Burda, Bauer, Holtzbrinck, and the Axel Springer-Verlag had a combined holding of almost 30%. A further 20% share in SAT 1 was held by APF, which is owned by 165 newspapers. The Axel Springer-Verlag in turn held a 35% share of APF. PKS, owned by several banks and business interests, held a 40% share in SAT 1 (see *Media Perspektiven*, 1985, p.18). It should also be remembered, that the SPD had sanctioned the use of a telecommunications satellite, although the use of such a satellite for television distribution had been deemed "medienpolitisch, wirtschaftlich und technisch fragwürdig" in the February policy document (in MP 2/1984, p.151).

Given the pronouncements of the Constitutional Court (BVG) in 1981, it was even doubtful whether the AKK had the power to license a

private channel for national distribution (see von Sell, 1984, p.187). In 1981 the Court had accepted a laxer regulatory regime for the pilot projects because they were experimental in nature (see *Urteil des Bundesverfassungsgerichts vom 16. Juni 1981*, in Ring, 1981, A-III 3, p.18). The pilots, too, had to be subject to legislation, but the Court conceded that legislators had "eine erheblich größere Gestaltungsfreiheit", because the pilots served to gain further knowledge. The licensing of SAT 1, however, affected all the *Länder*, and as such the experimental legislation was probably insufficient to satisfy constitutional demands, which included legally fixed criteria for the selection of applicants, especially if there was insufficient capacity to accommodate all (BVG 16. Juni 1981, in Ring, 1981, A-III 3, p.20; von Sell, 1984, p.189).

It was clear that the SPD's weak bargaining position had forced it into a situation where it could only react to what was already happening and becoming established fact. Having spent so much time and effort saying no to private broadcasting, the SPD could not realistically tolerate it in a consistent and logical way. The CDU/CSU, on the other hand, had achieved a tactical success at a time when Lower Saxony alone had passed legislation allowing private broadcasting on a permanent basis.

#### 3.6.4 The Bremerhaven Resolution - a step in the right direction

Once a decision had been taken on the use of ECS 1, the prime ministers turned their attention to a plan for the implementation of a

dual structure of private and public broadcasting. In February 1984, the prime ministers asked the *Länder* broadcasting commission to work out a plan for the award of future satellite capacity, in particular on TV-Sat. The commission was also asked to work out a guarantee of existence and further development for public broadcasting, and a set of uniform rules for the national distribution of private channels (see *Gemeinsames Satellitenkonzept der Länder. Vorläufiges Ergebnisprotokoll der Besprechung der Ministerpräsidenten der Länder am 23. Februar 1984*, in MP 2/1984, p.152). The broadcasting commission under the joint chairmanship of Lothar Späth (CDU), Prime Minister of Baden-Württemberg, and Klaus von Dohnanyi (SPD), Mayor of Hamburg, formed a working party to work out the details, before emerging with a plan on 29th June 1984 (see Groß, 1986, p.56).

Before the plan was discussed by all the prime ministers, the chairmen of the SPD parliamentary party at both national and *Land* level issued a policy document in Düsseldorf on 28th September 1984 (*Sozialdemokratische Position zur Medienpolitik*, in MP 10a/1984, pp.839-840). This was an attempt to coordinate the activities of the parliamentary party and the SPD prime ministers, and it used the policy document worked out by the SPD media commission in February 1984 as its starting point (p.839). The document was an elucidation of the demands made in February. In spite of the SPD *Länder's* decision in February to accept the licensing of SAT 1 by the AKK, the party still stuck to the principle of internal pluralism for private broadcasting (p.840). Perhaps as a reminder of what had happened with the AKK, it also demanded that private broadcasters be subject to

precise rules on licensing and content in accordance with constitutional demands (p.840). The document stated that ARD and ZDF should be awarded a transponder each on the TV-Sat, and that they should also be given access to telecommunications satellites (p.840). The document rejected any freeze on advertising levels on public channels (p.840). In the case of private broadcasting, it was argued that advertising should not exceed 15% of transmission time and that no commercial breaks should be allowed within programmes (p.840). The policy document also demanded a ban on sponsored advertising and on advertising on both Sundays and public holidays for private broadcasting (p.840).

Prime Minister Späth (CDU) and Mayor Dohnanyi (SPD) met a week before the prime ministers' meeting in Bremerhaven on 17th October 1984 to discuss the SPD's demands. These demands included domestic production quotas for private television, the introduction of advertising on WDR's radio services, which was non-existent at this time, and the award of DBS transponders to both ARD and ZDF (*Kritik an Medienpapier zog sich lange hin*, FR 18.10.1984, p.18). The *Länder* were under pressure to reach an agreement on TV-Sat at least, so that the Minister of Posts, Christian Schwarz-Schilling, could award a contract for the reserve satellite, TV-Sat 2 (*Eine Einigung ist noch nicht in Sicht*, FR 4.10.1984). The SPD's demands were met with threats from the CDU/CSU. For instance, Prime Minister Uwe Barschel (Schleswig-Holstein) stated that the CDU/CSU *Länder* might be forced to conclude a separate agreement on TV-Sat if no agreement was reached with the SPD *Länder* (*Eine Einigung ist noch nicht in Sicht*, FR



4.10.1984; see also *Die Union nimmt "medienpolitische Kleinstaaterei" in Kauf. Alleingang bei Privatsendern angedroht*, FR 16.10.1984, p.1).

The Länder prime ministers finally consented to a provisional agreement on the reorganisation of broadcasting at a meeting held in Bremerhaven from October 17th to 19th October 1984, the so-called Bremerhaven Resolution (*Vorläufiges Ergebnisprotokoll der Ministerpräsidentenkonferenz vom 17. bis 19. Oktober 1984 in Bremerhaven*, in MP 10/1984, pp.791-793). It constituted a framework for the coexistence of private and public broadcasting, and an attempt to bring some uniformity to the diverse nature of individual *Land* policy, although private broadcasting would continue to be supervised and licensed according to *Land* law (p.791).

In accordance with SPD demands, it was agreed to grant public broadcasting a guarantee of existence and further development. This included access to the new technologies, including satellite broadcasting, and a guarantee of adequate funding, mainly by the licence fee, to enable ARD and ZDF to participate in satellite broadcasting (p.791). However, it was also stated that private broadcasting must be given a framework which allowed it to meet the challenge of national and international competition (p.791). This required access to transmission facilities, appropriate sources of income from advertising, and a guarantee of national distribution and reception (p.791). Although the public service stations had been awarded a guarantee of existence and further development, the terms in

which the guarantee was couched placed ARD and ZDF in a less advantageous position than their commercial competitors.

In the case of TV-Sat, it was decided to award three transponders to new programme providers (p.793). ZDF and ARD were only awarded a shared transponder for one television channel on the reserve satellite, TV-Sat 2, which was to be launched some time after TV-Sat 1 (p.793). However, it was stated that ARD and ZDF might be allowed to cooperate with private programme providers, although there was no explanation about the form this cooperation should take (p.793). The fourth transponder on the first satellite was to be used for the transmission of 16 digital radio channels. These were to be divided between each *Land* and DLF, with the remainder awarded to the *Länder* according to size of population (p.793). In addition to TV-Sat, it was decided to award six transponders on the Intelsat communications satellite, to ARD, Bavaria, Berlin (for the transport of ARD third television channels), Lower Saxony, Schleswig-Holstein, and jointly to North Rhine-Westphalia and Hamburg (p.792). The award of an Intelsat channel to ARD was obviously a recognition of its parity with ZDF, which had been awarded an ECS 1 transponder in February for the purpose of a new culturally-orientated channel, 3SAT. However, there was nothing concrete in the resolution about the type of satellite channels public broadcasters might be allowed to provide. There was some hope that ZDF might be given a transponder on the first TV-Sat satellite in place of digital radio, as the prime ministers asked the broadcasting commission to consider this as a possibility (p.793).

The Bremerhaven Resolution's stipulations on broadcasting finance constituted the strongest restrictions on public broadcasting. It was stated that the licence fee would continue to be the main source of public service broadcasting's income (p.791). It was agreed that the public stations' financial requirements would be examined on a regular basis and amended, if necessary, to take account of general inflation and extra costs incurred by new obligations (p.791). The procedure for fixing the licence fee was to occur with "ein möglichst hoher Grad der Objektivierbarkeit" (p.791). As the system for fixing the licence fee was (and still is) highly politicised, involving the *Länder* prime ministers and the ratification of an agreement by each *Landtag*, the insistence on objectivity may have been optimistic.

The squeeze on public service broadcasting's funding was further reinforced by restrictions on advertising. The Resolution stated that as public broadcasting was likely to have a competitive advantage over private broadcasting for some time, private broadcasting's economic opportunities had to be formulated in such a way as to ensure its success (p.791). With this competitive advantage in mind, it was decided that advertising on public channels be frozen at existing levels in respect of amount, structures, and transmission areas (p.792). The existing rules on television advertising for ZDF and the ARD network included a 20 minute daily limit broadcast between 18.00 and 20.00. Existing rules on radio were left to the supervisory bodies of each individual station, although advertising on Sundays and public holidays was forbidden in both radio and television. A note attached to the Resolution extended the freeze to the third television

channels (p.793). This affected HR, whose broadcasting council had agreed to introduce advertising to HR's third channel from January 1985 (see Lehr, 1984, p.11). The Resolution allowed WDR, the only public station with no advertising on its radio services, to introduce the same amount of radio advertising as NDR, the station with the least amount of daily radio advertising, totalling 48 minutes (p.792).

The blanket freeze on advertising on radio and the third channels, effectively robbed the public stations' supervisory councils of their right to determine levels of advertising. Furthermore, it was not clear how public broadcasting should finance new channels, especially if a licence fee increase was not in the offing. For in addition to satellite channels, public broadcasters were also hoping to use recently available FM frequencies for radio. The Resolution's only concession on advertising was the possibility of allowing public broadcasting stations, like private broadcasters, to transmit advertising on Sundays and public holidays provided that this did not lead to an increase in advertising revenue (p.792).

In contrast to the restrictions placed on advertising in public channels, nationally distributed private channels were allowed to contain advertising amounting to 20% of daily output, with the possibility of commercial breaks within programmes if these exceeded 60 minutes (p.792). As advertising on Sundays and public holidays was not mentioned in the Resolution it has to be assumed that this too, was allowed. The same can be said of sponsored advertising.

These rules reflected similar regulations contained in legislation by the CDU/CSU *Länder* on private broadcasting.

The programme regulations for nationally distributed private channels were kept to a minimum. They included a general clause concerned with taste and decency, and the prevention of violent or pornographic programmes (p.792). Private channels had to respect laws on the protection of young people, and undertake not to incite racism or war, or endanger the security of the Federal Republic of Germany (p.792). Provided these conditions, and the rules on advertising, were kept, private channels would be given equal status with public service broadcasting for distribution into cable networks (p.792). Further reference to programme content placed the onus on the individual programme provider. It was expected only that nationally distributed private channels should contain appropriate amounts of information, education, and German language productions (p.791). Any reference to the need for each channel to exhibit diversity of opinion was omitted.

Reaction from the public broadcasters to the Bremerhaven Resolution was predictably hostile. The major points of controversy concerned the imprecision of the guarantee of existence and further development for ARD and ZDF, the limitations placed on advertising, and the award of capacity on TV-Sat. Friedrich-Wilhelm von Sell, former *Intendant* of WDR, called the Resolution an "eklatante Benachteiligung des öffentlich-rechtlichen Rundfunks" and an "unverhüllte Bevorzugung privater Rundfunkveranstalter" (cit. in *Muß Funk dem Fernsehen weichen*, FR 25.10.1984). Klaus Berg, chairman of the ARD/ZDF legal

commission, rejected the notion of a competitive advantage over private broadcasters and claimed: "Die Ungleichgewichtigkeit beider Systeme is nur scheinbar, ohnehin nicht vergleichbar und vor allem allenfalls kurzfristig" (1985, p.10). Wolfgang Lehr, former *Intendant* of HR, believed the freeze on advertising would make the public service stations more dependent on the licence fee, and consequently more dependent on the *Länder* which grant it (Lehr, 1984, p.11). He pointed out that the freeze would affect the small and medium-sized ARD stations most, as they were more dependent on advertising revenue (Lehr, 1984, p.11).

In an official ARD reaction, Friedrich Wilhelm Räuker, former *Intendant* of NDR and chairman of ARD, wrote to the *Länder* prime ministers underlining ARD disappointment at being awarded only a shared transponder with ZDF on TV-Sat 2, and requesting that ARD be allowed its own transponder on TV-Sat 1 (*Schreiben des ARD-Vorsitzenden Friedrich Wilhelm Räuker vom 6.11.1984 an die Ministerpräsidenten der Länder betr. Neuordnung des Rundfunkwesens*, MP 11/1984 pp.888-890, here p.889). He rejected the idea that public broadcasting had an advantage over private broadcasting, because public broadcasting had a greater range of programme obligations to fulfil and finance than private broadcasting (p.889). According to Räuker the limits placed on advertising were "besonders einschneidend", and failed to recognise the different financial strengths of individual stations, whose licence fee income varied considerably according to their size (p.889). The same points were stressed even more vehemently by the chairmen of the ARD supervisory

committees (*Erklärung der Gremienvorsitzenden der ARD in Berlin am 27.11.1984 zu einem Staatsvertrag über die Neuordnung des Rundfunkwesens*, MP 11/1984, p.890). They declared that the guarantee of existence and further development for public broadcasting was imprecise and insufficiently secured, whereas private broadcasting had been "in erheblichem Maße bevorzugt" (p.890).

Dieter Stolte, *Intendant* of ZDF, appears to have been more optimistic about the Bremerhaven Resolution (see *Erhalt und Zukunft der ARD sichern*, FR 12.11.1984, p.20). He pointed to public broadcasting's access to the new media, in particular to satellite broadcasting (p.20). Furthermore, the licence fee would continue to be the main source of public service funding, regardless of which channels were watched (p.20).

In a letter to the Rhineland-Palatinate Prime Minister Bernhard Vogel (CDU), the chairman of the *Länder* broadcasting commission, the churches protested about the removal of a ban on advertising on Sundays and public holidays in the Bremerhaven Resolution (*Schreiben der Kirchen vom 12. November 1984 an Ministerpräsident Bernhard Vogel zu einem Staatsvertrag der Länder zur Neuordnung des Rundfunkwesens in der Bundesrepublik Deutschland*, MP 11/1984, p.897-898). Prime Minister Vogel, in a reply, rejected the churches call for a ban on advertising on Sundays and public holidays ("*Werbeverbot an Sonntagen nicht aufrechtzuhalten*". *Ministerpräsident Bernhard Vogels Antwort auf das Medien-Moritorium der beiden Kirchen*, MP 1/1985, p.59). He argued that such an action was pointless, because foreign channels did not

observe this rule, and would absorb advertising income meant for West German channels if the ban continued.

Franz Arnold, a former advisor to the the Federal Post Office, saw the Bremerhaven Resolution in a more positive light (1984, p.11). As with most compromises, nearly everyone was dissatisfied with certain points (1984, p.11). Arnold argued that a DBS transponder each for ARD and ZDF, which constituted a doubling of programme output, might affect programme quality if the licence fee remained the same. He pointed out that programme quality was the main justification for public service broadcasting. If two instead of three TV-Sat channels had been awarded to private television, allowing ARD and ZDF a DBS channel each, there was a risk that the two private channels would be parcelled out according to party-political lines, which would ignore population concentrations in the north. Arnold supported the award of three TV-Sat channels to private television, according to *Länder* groupings in the south, north, and west. He believed that the Bremerhaven Resolution was a satisfactory compromise balancing political demands with the necessity of keeping foreign private channels out, via the absorption of domestic advertising revenue by domestic private channels.

### 3.6.5 An illusory consensus? Negotiations collapse

On the basis of the Bremerhaven Resolution, the broadcasting commission was asked to draw up a draft inter-*Land* agreement to be presented at the prime ministers' next meeting on 19th December 1984



(*Vorläufiges Ergebnisprotokoll der Ministerpräsidentenkonferenz vom 17 bis 19. Oktober in Bremerhaven*, MP 10/1984, p.793). At this point, the SPD began to show disquiet about the Bremerhaven Resolution, which was generally seen as a success for the CDU/CSU *Länder*. Many of the demands included in the SPD policy documents of February 1984 and September 1984 were not included in the Bremerhaven Resolution (see *Medienpolitisches Aktionsprogramm 1984 der SPD Medienkommission*, MP 2/1984, pp.149-151; *Sozialdemokratische Positionen zur Medienpolitik*, MP 10a/1984, pp.839-40). In these documents the SPD had insisted on two TV-Sat channels for the public stations and no advertising freeze on public channels. In the case of private broadcasting they had demanded internal plurality, domestic production quotas, the prevention of multi-media monopolies, a ban on sponsored advertising, and a limit of 15% of daily transmission time for advertising with no commercial breaks within programmes.

Strong dissatisfaction about the concessions made at Bremerhaven was beginning to emerge amongst the rank-and-file SPD membership. Johannes Rau (SPD), Prime Minister of North Rhine-Westphalia, doubted whether the Bremerhaven Resolution would be approved by the SPD-dominated *Land* parliaments (see *Der Medienfrieden währte nur kurz*, FR, 9.11.1984, p.16). Mayor Dohnanyi (SPD) of Hamburg, an architect of the Resolution, recognised that many SPD members were dissatisfied, but he warned against rejection because this might threaten the future of ARD and ZDF (cit. in *Erhalt und Zukunft der ARD sichern*, FR 12.11.1984, p.20). However, Dohnanyi had the support of the Hamburg parliament. In Hesse, the SPD was dependent on its coalition partner, the Green

Party, which was hostile to private broadcasting (see *Scharfe Kritik an Rundfunkbeschuß*, FR 24.10.1984, p.14). The Mayor of Bremen, Hans Koschnick (SPD), while acknowledging disappointment amongst some sections of the SPD, supported the Resolution for it was in his view a means of avoiding the collapse of ARD, and of securing the survival of small stations like Radio Bremen. He added: "Ich habe eine andere Position als die SPD-Ministerpräsidenten Rau und Börner, denn der WDR und der Hessische Rundfunk können auch ohne Werbung und Finanzausgleich existieren, Radio Bremen nicht" (cit. in *Erhalt und Zukunft der ARD sichern*, FR 12.11.1984, p.20).

Albrecht Müller (SPD), a former media policy advisor to Chancellor Brandt and Chancellor Schmidt, called the Bremerhaven Resolution "eine mittlere Katastrophe" for the SPD (1984, p.12). In particular, he criticised the pragmatic attitude adopted by the Mayor of Hamburg, Klaus von Dohnanyi. He accused Dohnanyi of turning Hamburg into a media showcase, by introducing legislation aimed at attracting private channels to Hamburg, in order to safeguard the city's many media-related jobs (p.12). Müller disagreed with Dohnanyi's argument that the new media could not be prevented, and that if nothing was done, West Germany would relinquish the chance to determine its own media policy (p.12). Müller argued that the taxpayer and the state made the introduction of private broadcasting possible in the first place, by subsidising cable installed by the Federal Post Office (p.12). He added that the CDU/CSU needed national distribution of private channels by satellite, and restrictions on public service broadcasting,

weil sie wissen, daß privates Fernsehen ohne Mithilfe des Staates, der den Satelliten und die Kabel subventioniert, und ohne die

Mithilfe der SPD-Länder (vor allem in Nordrhein-Westfalen) beim Einspeisen in die Kabelanlagen kein Geschäft werden würde. (1984, p.12)

According to Müller, this fact had been ignored by the SPD. He stated that the CDU would no longer take the SPD seriously, because of media policy statements which failed to achieve their expressed aims (1984a, p.10). Citing past concessions on the cable pilot projects, and the use of satellite channels, he concluded that the SPD had never gained by giving in to CDU/CSU demands.

The SPD's internal divisions, and increasing demands for changes to the Bremerhaven Resolution brought criticism from their political opponents. Uwe Barschel (CDU), Prime Minister of Schleswig-Holstein, said that if the Bremerhaven Resolution was not ratified by the SPD parliaments, the CDU/CSU *Länder* could, theoretically, seek their own solution on TV-Sat by reaching an agreement with the *Bundespost* (see "*nm Interview*", Neue Medien Newsletter, 10.11.1984). However, in the Constitutional Court decision of 28th February 1961, the following principle had been stated:

Wo immer der Bund sich in einer Frage des Verfassungslebens, an der alle Länder interessiert und beteiligt sind, um die verfassungsrechtlich relevante Vereinbarung bemüht, verbietet ihm jene Pflicht zu bundesfreundlichem Verhalten, nach dem Grundsatz *divide et impera* zu handeln, d. h. auf die Spaltung der Länder auszugehen, nur mit einigen eine Vereinbarung zu suchen und die anderen vor den Zwang des Beitritts zu stellen. (cit. in Lehr & Berg, 1971, p.251)

Furthermore, the Court had indicated that central government must not favour those *Länder* with governments of a similar political complexion (p.251). Barschel argued that the Court ruling did not apply to TV-Sat, because it had been made at a time when DBS was not available.

He also argued that a separate agreement on TV-Sat by the CDU/CSU *Länder* was permissible if the utmost had been done to secure an agreement between all the *Länder* ("*nm Interview*", Neue Medien Newsletter, 10.11.1984).

A policy document submitted by the SPD national party leadership on 20th November 1984 was obviously an attempt to be more conciliatory in an increasingly polarized situation (*Medienpolitische EntschlieÙung des SPD-Parteivorstandes*, MP 11/1984, p.891). This resolution represented a further departure from earlier policy documents. Where previously the SPD had demanded a 15% daily limit on advertising in private channels, and a ban on commercial breaks and sponsorship, it now requested only a reduction of advertising "auf das notwendige MaÙ", and any reference to commercial breaks and sponsorship was dropped (p.891). There was no longer a demand for domestic production quotas, only a call for "die Sicherung und Förderung einheimischer kultureller Produktionen" in private broadcasting (p.891). However, the resolution did call for the possibility of cancelling any inter-*Land* agreement by 1988, in order to reconsider amongst other things, production quotas (p.891). Referring to the freeze on advertising on ARD and ZDF channels, the SPD stated that the public stations must be allowed to finance satellite radio by advertising, because the Bremerhaven Resolution's advertising freeze in respect of transmission areas, would have prevented the ARD stations from transferring their radio services, which are partially funded by advertising, to satellite (p.891).

Prior to the submission of a draft inter-Land agreement, it became clear that the limitations placed by the Bremerhaven Resolution on WDR radio advertising were becoming a controversial issue. The Resolution had stipulated that WDR be allowed to introduce 42 minutes of radio advertising a day, an amount equal to NDR, which broadcast the smallest amount of radio advertising of all the ARD stations. The SPD national leadership, in an attempt to ease negotiations, had agreed not to insist on lifting these restrictions (*SPD verzichtet auf Nachbesserung*, FR 26.11.1984, p.11). However, a few days prior to this decision, Frank Dahrendorf, the SPD's media spokesperson, declared that the party wanted to allow advertising on WDR radio equivalent to the average of all the ARD stations, or 120 minutes a day (FR 26.11.1984, p.11).

On 19th December 1984, the *Länder* broadcasting commission presented a draft inter-Land agreement on the reorganisation of broadcasting at the prime ministers' meeting in Bonn (*Entwurf Staatsvertrag zur Neuordnung des Rundfunkwesens Stand 14.12.1984*, MPD II/1985, pp.45-48). The draft resembled the Bremerhaven Resolution with some changes.

As with the Bremerhaven Resolution, it was agreed to award the first three transponders on TV-Sat to new (i.e. private) channels. For this purpose individual *Land* shares were calculated in the following percentages: Baden-Württemberg 35%, Bavaria 40%, Berlin 20%, Bremen 10%, Hamburg 15%, Hesse 30%, Lower Saxony 35%, North Rhine-Westphalia 60%, the Rhineland-Palatinate 25%, the Saar 10%, and Schleswig-

Holstein 20% (p.45). This division of capacity constituted a disadvantage for North Rhine-Westphalia, which was given less than its population merited (see *SPD-Ländern gelang Nachbesserung des Staatsvertrags nicht*, FR 17.12.1984, p.1). The term "new programme providers" (also used in the Bremerhaven Resolution), instead of private channels, was included on the insistence of North Rhine-Westphalia, who wanted to leave open the option of possible cooperation between WDR and the *Westdeutsche Allgemeine Zeitung* (WAZ), the largest newspaper concern in North Rhine-Westphalia (see Groß, 1986, p.70). The Bremerhaven Resolution was modified to allow ARD and ZDF a shared transponder on the first satellite, TV-Sat 1, so giving them the chance to use DBS from the start, but the disadvantage of a shared transponder still remained (p.45). However, if any ARD stations' involvement with private satellite channels, exceeded that of ZDF by 10%, then ARD's share in the transponder fell to 40% (p.45). This would appear to relate to any WDR cooperation with WAZ. Digital radio was moved to the fifth transponder on the second satellite, TV-Sat 2 (p.45).

ARD and ZDF's right of access to satellite technology was given more precision by imposing on them the obligation to establish one new satellite channel each, although it was not specified what type of satellite they could use (p.46). ARD's channel had to reflect the cultural diversity of Europe (p.46). ZDF's channel had to portray the cultural diversity of the German-speaking countries, possibly in cooperation with foreign stations (p.46). This amounted to acceptance of ARD and ZDF's planned cultural channels, Eins Plus and 3SAT

respectively. However, this acceptance was to be disputed by the CDU/CSU *Länder* in later negotiations.

The guarantee of funding for public broadcasting was amended to include continued commitment to the equalisation agreement, which regulates subsidies from the larger ARD stations to SFB, SR, and RB (p.46). The freeze on advertising was reinforced by backdating it to 19th October 1984 (p.46). This meant that HR would be prevented from introducing advertising to its third television channel. It also meant that advertising was banned from any future public service channels. In the case of new FM radio channels and digital radio on TV-Sat, undertaken by individual ARD stations, this limitation was particularly galling, because these would also be denied licence fee support, which could only be altered for the purpose of "neue gemeinsam übertragene Aufgaben" like satellite television (see p.46). The ban on advertising for FM radio might then have forced the SPD *Länder* to award FM frequencies, available from 1985, to private interests (see *SPD-Ländern gelang Nachbesserung des Staatsvertrages nicht*, FR 17.12.1984, p.1).

Nationally distributed private satellite channels were to be licensed and supervised according to individual *Land* legislation (p.46). This ignored the fact that DBS, unlike telecommunications satellites, which can be regulated at the point of entry into cable systems, are nationally available by means of individual reception antennae. By refusing to include any rules on diversity of opinion and content, the rights of those *Länder* which had not passed

legislation allowing private broadcasting would have been overruled. The conditions for national distribution of private channels only included adherence to advertising stipulations, and general rules on taste and decency including a ban on pornographic, violent, or racist content (p.47). The advertising rules were extended to include a clause on sponsored programmes. These could only be broadcast if the name of the sponsor was mentioned at the beginning and the end of the transmission, and if there was no direct link between programme content and the sponsor's business interests (p.47). As was the case with the Bremerhaven Resolution, it was only expected that nationally distributed private channels would contain appropriate amounts of information, education, and domestic productions (p.47).

Negotiations collapsed on 19th December 1984 following disagreements about the amount of advertising to be allowed on WDR radio, although other problems, including advertising on public channels generally, the award of TV-Sat transponders, the lack of regulations for private channels, and the imprecision of those stipulations concerning the licence fee, undoubtedly played a role too. The SPD *Länder* had demanded that WDR be allowed to transmit 80-110 minutes of radio advertising a day (see *Keine Einigung über Rundfunk-Vertrag*, FR 20.12.1984, pp.1-2). This was unacceptable to the CDU/CSU *Länder*. Prime Minister Johannes Rau of North Rhine Westphalia, justified this demand by pointing out that WDR contributed DM82 million a year to the DM148 million equalisation fund, used to subsidise RB, SR, and SFB (p.2). He added that he could not override the North Rhine-Westphalian parliament, which was at this time



considering a new WDR law, with a decision made by the other prime ministers (p.2).

Following failure to reach an agreement on the 19th December, the SPD prime ministers issued a declaration in an attempt to keep negotiations going (*Erklärung der sozialdemokratischen Ministerpräsidenten in Düsseldorf am 5. Januar 1985 zur Neuordnung des Rundfunkwesens in der Bundesrepublik*, MP 1/1985, pp.57-58). Here, it was pointed out that attempts to freeze advertising in terms of transmission areas would prevent the ARD stations from transferring their terrestrial radio services, which contained advertising, to TV-Sat (p.57). Instead it was proposed, that advertising be allowed on ARD's DBS radio services, provided there was no increase in advertising income (p.57). The restriction of 42 minutes of advertising a day on WDR's radio services was rejected (p.57). It was pointed out that BR, which contributed far less to the equalisation fund, was allowed to broadcast 160 minutes of radio advertising a day (p.57). It was recommended that WDR be allowed to broadcast advertising equal to the average amount of advertising transmitted by all the ARD stations (p.57). In the case of advertising on HR's third television channel, the SPD prime ministers stated that this could only be changed by HR's supervisory councils (p.57). In recognition of the fact that an agreement on quotas for German and European production was unlikely, the SPD prime ministers proposed that the broadcasting commission should report on the levels of German and European content on both private and public channels after three

years, and at three year intervals thereafter (p.58). Measures could then be undertaken if the situation proved to be unsatisfactory (p.58).

Unlike the SPD *Länder*, the CDU/CSU *Länder* proved to be far less conciliatory. They were annoyed with the SPD's constant changes of mind, which had included toleration of private broadcasting and the Bremerhaven Resolution on the one hand, and then attempts to alter the Resolution. Lothar Späth (CDU), Prime Minister of Baden-Württemberg, blamed the SPD's "Nachbesserungsvorschlägen" for the breakdown in negotiations (*Keine Einigung über Rundfunk-Vertrag*, FR 20.12.1984., p.2). At a meeting of the CDU/CSU prime ministers in Bonn in January 1985, Uwe Barschel (Schleswig-Holstein) and Ernst Albrecht (Lower Saxony) refused to give further concessions to the SPD (see "*Saubere Trennung*" auf dem TV-SAT 1?, FR 10.1.1985, p.14). Lothar Späth appeared to be more placatory, offering the prospect of a TV-Sat channel each for ZDF and ARD, and the possibility of advertising on public satellite radio, provided that this remained "kostenneutral" (see "*Saubere Trennung*" auf dem TV-Sat 1?, FR, 10.1.1985, p.14). He stated that cooperation between private and public broadcasters might be possible at a regional level, but insisted that national broadcasting needed clear separation between the private and public sectors (p.14). However, where there had previously been talk of negotiation, Späth now spoke of "sondieren" or sounding out (p.14).

### 3.6.6 Further negotiations founder

Following the collapse of negotiations on 19th December 1984 there was a period of inactivity until March 1985, when Bernhard Vogel (CDU) of the Rhineland-Palatinate and Klaus Dohnanyi (SPD) of Hamburg met for further discussions (*Ein Kompromiß deutet sich an*, FR 7.3.1985, p.18). Advertising on WDR radio remained a major problem, but the CDU/CSU were prepared to compromise. The SPD demanded 85 minutes of advertising a day, while the CDU/CSU admitted that they would not insist on a 42 minute limit (p.18). This was not enough to bring about any significant movement in the deadlock.

Jürgen Büssow (SPD), the North Rhine-Westphalian government media spokesman, admitted that North Rhine-Westphalia was considering dropping out of attempts to conclude an inter-Land agreement (see *Neues in Sachen Medienstaatsvertrag*, FR 25.6.1985, p.13). He suggested awarding 4 TV-Sat channels to ARD, ZDF and 2 private channels, each to be decided by the SPD and CDU/CSU *Länder* (p.13). Instead of a full inter-Land agreement, he proposed that advertising and rules for the protection of children and young people be fixed by an administrative agreement between the *Länder*, or by a slimmed-down version of an inter-Land agreement (p.13). This idea was rejected by Edmund Stoiber, state secretary at the Bavarian chancellory, who called the proposal a sign of the "medienpolitische Hilflosigkeit und Zerissenheit der SPD" (p.13).

In July 1985 Prime Minister Vogel (CDU), Mayor Dohnanyi (SPD), and the Minister of Posts, Christian Schwarz-Schilling held discussions in Bonn to get negotiations moving (see *Neue Gespräche über Rundfunkstaatsvertrag*, FR 9.7.1985, p.7). Schwarz-Schilling was anxious to know which programme providers would be interested in a TV-Sat transponder so that he could contact them, in order to sort out technical and financial details (p.7). It was agreed to adopt a procedure whereby the Federal Post Office would start negotiations with ARD, ZDF, the private channels, SAT 1 and RTL Plus, and the WAZ newspaper concern on TV-Sat (p.7). If the other prime ministers agreed to this proposal, Schwarz-Schilling, secure in the knowledge that he had customers for TV-Sat, would then award a contract for the second DBS satellite by the beginning of August, with *Länder* negotiations for an inter-Land agreement resuming in September (p.7). This plan failed because Hesse and Lower Saxony wanted more than five candidates to be considered (see *TV-SAT: Vogel nennt der Post noch keine Namen*, FR 5.8.1985, p.12). It was therefore decided to delay informing Schwarz-Schilling of those interested in TV-Sat until October 1985, giving time for other applicants to make their interest known (p.12).

The prime ministers met in Saarbrücken on 23rd and 24th October 1985, but prospects for the conclusion of an inter-Land agreement were slim. Prior to the meeting, the prime ministers were criticised for their failure to reach an agreement which gave private broadcasting the security it needed both by the BDZV, whose members are heavily involved in private broadcasting, and by SAT 1, the private satellite

channel, which had been distributed on ECS 1 since January 1985 (see SAT 1, 1985, pp.764-769; BDZV, 1985, pp.769-772). The BDZV and SAT 1 called for restrictions on advertising in public service broadcasting, and a halt to further expansion by ARD and ZDF.

At Saarbrücken, Prime Minister Vogel and Mayor Dohnanyi put forward proposals which would make transmission times for advertising on ARD and ZDF more flexible, provided that advertising income was fixed as a percentage of total income (see *Bald Einigung im Länder-Medienstreit*, FR 18.10.1985, p.12). If advertising revenue fell, the volume of advertising could be increased. In addition to allowing public channels to advertise on Sundays and public holidays, they also considered the possibility of shifting ARD and ZDF's advertising threshold from 20.00 to 20.30, provided no advertising was introduced to the third television channels or satellite channels (p.12). However, such a solution failed to take into account the limits to extending advertising time, especially if advertising prices fell considerably due to competition from private broadcasting (see Groß, 1986, p.75). Negotiations between the prime ministers finally broke down in Saarbrücken, because of Hesse's refusal to pressurise HR into removing advertising from its third television channel, although other unresolved issues were also a factor (see Groß, 1986, p.77).

### 3.6.7 Advertising on HR3

The issue of advertising on HR's third television channel had been threatening to erupt ever since the HR broadcasting council approved

the introduction of two five minute advertising blocks between 7pm and 8pm in June 1984, to take effect in January 1985 (see Groß, 1986, p.70). This contradicted both the Bremerhaven Resolution and the draft inter-Land agreement, which each aimed to freeze advertising. The Hessian government refused to take any action against HR, arguing that the decision to introduce advertising was an autonomous decision by the broadcasting council, which could not be overturned by the state (see *Neue Annäherungsmöglichkeiten bei Rundfunk-Staatsvertrag*, NMNL, 12.1.1985, p.1). According to Bernd-Peter Arnold, head of radio regionalisation at HR:

Der Hessische Rundfunk hat es (the introduction of advertising to its third channel) gemacht, weil er der Meinung ist, er ist rechtens Werbung im Dritten Programm zu machen, und wenn es nicht ausdrücklich heißt im Dritten darf keine Werbung stattfinden, dann heißt es sie darf stattfinden. Sie muß ja nicht eigens erlaubt werden.

The CDU/CSU thought differently (see also Ricker, 1985). In a letter to the permanent secretary of the Hessian state chancellory, Reinhart Bartholomäi (SPD), Hanns-Eberhard Schleyer, the permanent secretary of the Rhineland-Palatinate state chancellory, drew attention to the ZDF inter-Land agreement, which contained advertising stipulations applicable to ARD, ZDF, and, in his opinion, the third television channels (*Schreiben von Staatsekretär Hanns-Eberhard Schleyer vom 6. August 1984*, MP 9/1984, pp.715-716). He backed up his argument by referring to the existence of a *Länder* declaration, dated 30th April 1965, where it had been agreed that there should be no advertising on the third television channels (p.715). The Hessian prime minister had signed this agreement on 3rd August 1965 (p.715).

At the same time the broadcasting stations had given assurances not to introduce advertising to the third channels (p.715). Schleyer was convinced that the limits placed on television advertising applied to the whole of ARD's output, and not just to the ARD network (p.715). This was supported by the fact that advertising was not transmitted during ARD network programmes, but during the preceding regional opt-outs (p.716).

In a reply, Reinhart Bartholomäi countered these arguments by stating that the ZDF-*Staatsvertrag* only applied to the ARD network of which the regional opt-outs were an integral part (*Antwortschreiben von Staatssekretär Reinhart Bartholomäi vom 28. August 1984*, MP 9/1984, pp.716-719). He argued that the third television channels were not covered by the advertising rules contained in the ZDF-*Staatsvertrag*, because the third channels did not exist when the ZDF-*Staatsvertrag* was concluded. Furthermore, in his view, the Hessian prime minister's agreement in 1965 not to introduce advertising on HR's third channel was only a promise aimed at getting assurances from HR that there would be no advertising on this channel (p.718).

In financial terms, the advertising revenue earned by HR from advertising on its third channel did not represent a threat to the press or new private channels, but it had a symbolic value for the CDU/CSU in their fight to get the best opportunities for private broadcasting. The Rhineland-Palatinate government decided to take Hesse to the Federal Administrative Court in Berlin to force it to stop HR from transmitting advertising on HR3 (see *Mainz klagt gegen*

*Werbung im dritten Fernsehprogramm Hessens*, SDZ 9.1.1986, p.6). The national CDU media spokesman, Dieter Weirich, recommended the cancellation of inter-Land agreements on the licence fee by the end of 1987 if HR did not comply (see *Wachsender Druck auf Hessischen Rundfunk*, SDZ 20.1.1986, p.16). In a speech to the Bavarian senate the permanent secretary of the Bavarian chancellory, Edmund Stoiber repeated the threat, and added that a cancellation of the inter-Land equalisation agreement, which regulates financial subsidies from large to small ARD stations, might be considered as a further option (*Privater Appetit auf den Gebührentopf*, SDZ 31.1.1986, p.21).

In a speech to the Hessian *Landtag*, which occasioned the introduction of a bill allowing the reception of satellite channels in Hesse, Prime Minister Börner (SPD) rejected the blame levelled at Hesse and HR for the collapse of negotiations for an inter-Land agreement (Börner, 1986, pp.113-120). The bill did not allow the establishment of private channels in Hesse, only their reception from other *Länder*. Although Hesse was opposed to private broadcasting, it did not feel that it could constitutionally block the reception of private channels (p.114). Besides, individuals could receive these channels by installing their own dish antennae.

Börner, however, was concerned with the national distribution of satellite channels, which he argued must be subject to an inter-Land agreement and detailed regulation, because they affected all *Länder* (p.117). In his opinion, any solo efforts by the CDU/CSU *Länder* were unconstitutional. He underlined the autonomy of HR and the right of



the Hessian government to determine its own legislation for regional broadcasting in Hesse (p.117). In his view the issue of HR3 advertising constituted pressure, by Bavaria in particular, to force a broadcasting policy on other *Länder*. In this sense, advertising on HR 3 was just a pretext to force the pace of negotiations, for Bavaria would have found some other reason if this one had not existed (p.118). In the event of a cancellation of inter-*Land* agreements on the licence fee and equalisation, Börner could envisage a situation where those ARD stations in SPD *Länder* (WDR and HR), could adequately subsidise SR and RB (p.119). If the CDU/CSU *Länder* undertook a separate agreement on TV-Sat, he could also envisage cooperation between Hesse and North Rhine-Westphalia for the establishment of an advertising-supported satellite channel, which would impede the chances of any private channels operating under an agreement forged by the CDU/CSU *Länder* (p.119). However, Börner ended his speech on a conciliatory note. In spite of counter-threats against the CDU/CSU, he was not interested in separate agreements, believing unanimity amongst the *Länder* to be a necessity (p.119). He was prepared to consider the question of advertising on HR3, but only if attempts to pressurise Hesse ceased (p.119).

### 3.6.8 Eins Plus - a pretext to argue

Further controversy arose quite suddenly after the collapse of negotiations in Saarbrücken in October 1985 at the beginning of 1986. The argument concerned the lack of legislative approval for ARD's planned cultural satellite channel, Eins Plus, which was due to start

on 29th March 1986. This was another episode in a long string of controversies which had included advertising on WDR radio, and advertising on HR3. Eins Plus may have been pushed to the fore, because the controversy surrounding advertising on HR3 was on hold, awaiting the outcome of court proceedings initiated by the Rhineland-Palatinate.

Attempts by the CDU/CSU *Länder* to prevent Eins Plus at such a late stage were surprising, given that ARD's intentions had been known to the prime ministers since the end of 1983 ( see *Eins Plus - Ein deutschsprachiges Kulturprogramm für Europa*, MP 2/1984, pp.151-155). ARD's preference for its own satellite channel, rather than cooperation with private channels, had also been communicated to the prime ministers in January 1985 (*Schreiben des ARD Vorsitzenden Friedrich Wilhelm Räuher vom 11. Januar an die Ministerpräsidenten der Länder zur künftigen Ordnung des Rundfunkwesens in der Bundesrepublik Deutschland*, MP 1/1985, p.50). An administrative agreement, which provided the basis for the channel, was agreed by the ARD stations on 3rd December 1985 and signed in February 1986 (*Verwaltungsvereinbarung der ARD-Landesrundfunkanstalten für das Satellitenprogramm "Eins Plus" vom 3. Dezember 1985*, ARD Jahrbuch, 1986, p.405). Furthermore, the prime ministers had already given their implicit approval to Eins Plus in earlier agreements, obviously designed to give it equal status with ZDF, which had been awarded an ECS transponder for its cultural channel, 3SAT, in February 1984 (see *Gemeinsames Satellitennutzungskonzept der Länder - Vorläufiges Ergebnisprotokoll der Besprechung der Länder*, MP 2/84, p.152). 3SAT

had been broadcast from ECS 1 since December 1984. ARD's right to participate in satellite broadcasting had also been guaranteed in the Bremerhaven Resolution (in MP 10/1984, pp.791-793) and the draft inter-*Land* agreement on the reorganisation of broadcasting of December 1984 (in MPD II/1985, pp.45-48). At Bremerhaven it had also been decided to award ARD a transponder on the telecommunications satellite, Intelsat V (p.791). Additionally, the draft inter-*Land* agreement had even placed ZDF and ARD under the obligation of providing culturally orientated satellite channels (p.46).

The CDU/CSU's attacks, in which Bavaria and Baden-Württemberg played a leading role, were grounded on the assumption that Eins Plus could only exist on the basis of a ratified inter-*Land* agreement (see Wankell, 1986a, p.1). They based their argument on Constitutional Court pronouncements, which demanded that the *Länder* parliaments legislate "wesentliche Entscheidungen" (see Ott, 1986, p.27).

Edmund Stoiber (CSU), permanent secretary at the the Bavarian state chancellory, argued that the 1959 inter-*Land* agreement on the coordination of the ARD television network, proved that further ARD channels needed legislative approval (see Ott, 1986, p.27). This agreement had stated: "Die Rundfunkanstalten werden ermächtigt und verpflichtet, gemeinsam ein Fernsehprogramm zu veranstalten" (*Abkommen der Länder über die Koordinierung des ersten Fernsehprogramms vom 17.1.1959*, ARD Jahrbuch, 1970, p.311). Stoiber put the emphasis on the word "ein" to underline his argument that only one channel had been permitted by the *Länder* in 1959 (see Ott, 1986,

p.27). The CDU/CSU also argued that the Intelsat V transponder had only been awarded to ARD at Bremerhaven for technical purposes, and that nothing had been agreed on Eins Plus (see Wankell, 1986, p.1). In fact there had been no stipulations on the experimental use of the satellite in the Bremerhaven Resolution. The CDU/CSU *Länder* were also concerned that the cost of Eins Plus would necessitate an unacceptable rise in the licence fee (see Wankell, 1986, p.1). Edmund Stoiber argued that when the licence fee was last set, there had never been any mention of further national public broadcasting channels (see Ott, 1986, p.27). Stoiber also rejected the idea of feeding Eins Plus into Bavarian cable networks, because the Bavarian new media law, responsible for the regulation of cable and satellite, only allowed new public broadcasting channels if these did not usurp other programme providers (see Ott, 1986, p.27; see Art.27 *Gesetz über die Erprobung und Entwicklung neuer Rundfunkangebote und anderer Mediendienste in Bayern*, MPD I/1985, pp.1-10).

The reasons behind this sudden flurry to prevent Eins Plus were to be found in the failure to reach an agreement on an inter-Land agreement on the reorganisation of broadcasting. The political climate had undoubtedly worsened since the breakdown of negotiations in Saarbrücken in October 1985. Private broadcasters were experiencing financial difficulties and expressed fears about excessive competition from Eins Plus, although the channel was to contain no advertising, and its highbrow content was unlikely to offer an insurmountable challenge. Jürgen Doetz, managing director of SAT 1, claimed: "Das zieht uns nur potentielle Zuschauer ab und bringt den

Gedanken des Privatfunks nicht weiter" (cit. in SDZ 7.2.1986). The CDU/CSU was obviously anxious to show its commitment to private broadcasting, having been criticised by private programme providers for not doing enough in their interests (see SAT 1, 1985, pp.764-769; BDZV, 1985, pp.769-772).

ARD put forward its case for Eins Plus, arguing that existing ARD agreements and existing broadcasting legislation provided sufficient justification for the channel (see Wankell, 1986, p.1). For instance, the *Fernsehvertrag*, an agreement amongst the ARD stations which provides the basis for ARD television network, had been concluded on the 27th March 1953 without an inter-*Land* agreement (see Wankell, 1986, p.1). Eins Plus was being established along the same lines. Neither the third channels nor other cooperative ventures had required legislative approval in the past. The *Länder* had concluded an inter-*Land* agreement for the coordination of the ARD TV network six years after the *Fernsehvertrag* on 17th April 1959, but according to ARD, this merely obliges the ARD stations to cooperate in providing a networked television channel, and does not constitute legal approval of the *Fernsehvertrag* (see Morgenstern, 1986, p.10). According to Albert Scharf, BR's lawyer, "Welche Programme wir mit wem veranstalten, das ist Ausfluß unserer Programmautonomie" (cit. in Ott, 1986, p.27). The ARD broadcasters also drew attention to the last licence fee increase in 1983, which had included a sum of DM 0.45 in each licence fee for innovations like Eins Plus (see Wankell, 1986b, p.2). Moreover, ARD argued that Eins Plus was an experiment in the same vein as ZDF's 3SAT, which also lacked legislative approval from

the *Land* parliaments (see Wankell, 1986b, p.3). Bearing this in mind, ARD could have argued that Sat 1, the nationally distributed private channel, lacked legislative approval too. Its licence came from the AKK in Ludwigshafen, on the basis of the experimental Rhineland-Palatinate cable pilot project law, which was not originally intended for the supervision of national satellite channels.

On 3rd February 1986 Prime Minister Späth (CDU) of Baden-Württemberg tried to reach a compromise on this issue (*Ministerpräsident Lothar Späth: ARD Rundfunkanstalten können Weg für Medienstaatsvertrag der Länder frei machen, Pressemitteilung 3.2.1986, MP 2/1986, p.20-21*). He proposed that if ARD made a binding declaration to stop advertising on HR3 by 30th June, he would recommend to the prime ministers that Eins Plus should be allowed to transmit for three months on a trial basis (p.21). This plan came to nothing. On 13th March 1986, the prime ministers met in Bonn to discuss the inter-*Land* agreement, but talks broke down because of Eins Plus (see *Intendanten beraten erneut über "Eins Plus"*, FR 17.3.1986, p.20).

Following the break down in *Länder* negotiations, there were renewed threats about cancelling inter-*Land* agreements on the licence fee (see Wankell, 1986b, p.3). Baden-Württemberg, however, decided to initiate legal proceedings against SWF and SDR. SWF, the Baden-Württemberg station where Eins Plus is based, was sent a warning letter by the Baden-Württemberg government on 14th March demanding that it cease its involvement with the channel, because Eins Plus had no legislative

approval (see Wankell, 1986b, p.1). The Baden-Württemberg government was exercising its rights of legal supervision over SWF, rights which are contained in clause 21 of the SWF broadcasting law (*Staatsvertrag über den Südwestfunk vom 27. August 1951*, in Ring, 1981, C-IV 1.8.1). Rights of legal supervision by governments are contained in most broadcasting laws, but must only be used to ensure that the procedures of broadcasting law are adhered to; government powers do not include supervision of content (see Jank, 1967, p.104). SWF complained that the *Land* government's insistence on an immediate withdrawal from Eins Plus exceeded its powers of legal supervision (see Wankell, 1986b, p.1).

In Bavaria the *Land* ministry of education and culture, responsible for the legal supervision of BR, took action on 26th March 1986, in order to prevent BR's participation in Eins Plus (see Janssen, 1986a, p.2). The ministry demanded that the BR broadcasting council lift its decision to allow BR participation in Eins Plus by 30th April 1986 (see Janssen, 1986a, p.2). It also demanded that BR leave the ARD administrative agreement on Eins Plus (see Janssen, 1986a, p.2). At another level decisions were being taken to prevent Eins Plus being fed into Bavarian cable systems. In collusion with the state chancellory, the Bavarian supervisory authority for private broadcasting, the *Landesmedienzentrale*, announced that it was not possible to feed Eins Plus into Bavarian cable networks (see Ott, 1986, p.27).

The *Land* administrative court in Karlsruhe rejected Baden-Württemberg's application for an injunction to prevent SWF's involvement in Eins Plus on 26th March 1986 (see Frenkel, 1986, p.3). The court stated that Baden-Württemberg was not allowed to object to the "Tätigkeit" of SWF by instituting administrative proceedings (see Ott, 1986a, p.3). Baden-Württemberg therefore appealed to the *Verwaltungsgerichtshof* in Mannheim (*Beschluß des Verwaltungsgerichtshofs von Baden-Württemberg zum Verbot von "Eins Plus" vom 27. März 1986*, ARD Jahrbuch, 1986, pp.404-411). The appeal was rejected on 27th March 1986 and the first court's ruling was upheld. The court pointed to the experimental nature of Eins Plus, and referred to the similar status of ZDF's 3SAT, against which no action had been undertaken. It admitted that the legal right of public stations to establish new channels was unclear, but SWF had not overstepped its rights. The court stated that any decision on the legality of Eins Plus required a ruling from the Constitutional Court.

The courts in Baden-Württemberg had restricted their judgements mainly to administrative aspects, but the Bavarian courts went further in their statements. BR had started proceedings at the Munich Administrative Court to get the ministry of education and culture's measures rescinded (see Janssen, 1986a, p.2). It won this case on 27th March 1986.

The Munich court stated that an inter-Land agreement was not necessary for BR's involvement in Eins Plus, and it referred to the constitutionally guaranteed right of broadcasting stations to make



autonomous programme policy decisions (see Janssen, 1986a, p.3). The court rejected the view that the inter-Land agreement on the coordination of the ARD television network obliged the broadcasting stations to seek legislative approval for Eins Plus also, because this agreement only referred to obligations connected with the first television channel, without excluding additional channels (see Janssen, 1986a, p.3).

The ministry appealed to the Munich *Verwaltungsgerichtshof*, which rejected the appeal on 28th March 1986 and upheld the previous decision (*Entscheidung des Bayerischen Verwaltungsgerichtshofs zum Verbot von "Eins Plus" vom 28. März 1986*, ARD Jahrbuch, 1986, pp.412-413). The court felt that the argument about Eins Plus disrupting the broadcasting scene was contradictory, because Bavarian legislation on private broadcasting seeks to promote programme diversity, and does not exclude public broadcasting from participation in new technical possibilities. More importantly the court referred to past Constitutional Court rulings and stated:

Vor allem aber wiegt eine Erschwernis der Marktchancen privater Anbieter für die Interessenabwägung weit geringer als eine mögliche Beschneidung des den öffentlichen Rundfunkanstalten zustehenden Grundrechts der Rundfunkfreiheit. (p.413)

The economic survival of private broadcasting, one of the Bavarian government's main arguments for a ban on Eins Plus, was therefore seen by the Court as subordinate to the higher ideals of broadcasting independence. The court pointed out that if BR was forced to opt out of Eins Plus, it would lose an opportunity of gaining experience in this field of broadcasting. Referring to the financial arguments used

against Eins Plus, the court pointed out that the licence fee contained a sum for innovations. Furthermore, the court posed the question of whether it would be better for the broadcasting stations, rather than the *Länder*, to determine the level of licence fee in the interest of broadcasting independence (p.413). The court had clearly approved BR's participation in Eins Plus, although it made no ruling on the channel's distribution into Bavarian cable networks.

The four court decisions were a decisive defeat for CDU/CSU aspirations. Ott calls the decisions "Nachhilfeunterricht in Sachen Demokratie und Staatslehre für Medienpolitiker der Union und der SPD" (Ott, 1986a, p.3). The route to preventing Eins Plus via the administrative courts had effectively been blocked, and any further action by the CDU/CSU *Länder* would have necessitated proceedings at the Constitutional Court. Although the decisions were a victory for ARD, the status of Eins Plus was still not clear. The extent to which governments might exclude ARD and ZDF from certain areas of broadcasting in order to protect private stations would have to wait for a Constitutional Court case brought by SDR and SWF against the Baden-Württemberg media law.

Eins Plus began broadcasting, as scheduled, on 1st April 1986. Initially the authorities responsible for cable and private broadcasting in Baden-Württemberg and Bavaria tried to delay the distribution of the channel into cable networks in these *Länder*, but this problem was eventually overcome. Perhaps the most significant thing to emerge from the Eins Plus controversy, however, was the ARD

stations' ability to stick together in the face of adversity. Considering their number, rivalries, and different types of party political dominance, this was no mean feat.

#### 3.6.9 Going separate ways - north and south

CDU/CSU frustration at *Länder* negotiations breaking down in Saarbrücken in 1985, and in Bonn again on 13th March 1986, resulted in two initiatives by the CDU/CSU *Länder* for awarding satellite transponders on TV-Sat to private channels. Threats to pursue independent agreements had frequently been made in the past, in order to pressurise the SPD into signing an inter-*Land* agreement, but they now appeared to constitute a real threat to the unity of media policy-making amongst the *Länder*.

The CDU/CSU *Länder* had been encouraged to pursue a separate course by central government's decision on 5th March 1986, to allow the Federal Post Office to award transponders on TV-Sat according to a key agreed by the *Länder* in the draft inter-*Land* agreement of 14th December 1984 (see *Bleibt die ARD vor der Tür?*, FR 13.3.1986, p.22). This provoked SPD threats of a constitutional complaint against any attempts to sign such separate agreements (see *Medienstaatsvertrag der "Nordschiene"*, FR 24.3.1986, p.18). Paul-Leo Giani, at the state chancellory of SPD-led Hesse, argued that any separate agreements were unconstitutional because DBS satellites, unlike telecommunications satellites which can be regulated at the point of entry into cable systems, can be directly received in the home, and would therefore

have affected all *Länder* (see *Klagt SPD gegen Medienverträge*, FR 4.4.1986, p.18). Oskar Lafontaine (SPD), Prime Minister of the Saarland, objected to any separate agreements on principle, but floated the idea of a *Medien-Dreieck*, a concept which allowed the remaining SPD *Länder* to claim a TV-Sat transponder for their use (see Frenkel, 1986, p.3).

The SPD's threats were to no avail. The so-called 'south track' or *Südschiene* was signed by the CDU/CSU prime ministers of Bavaria, Baden-Württemberg and the Rhineland-Palatinate on the 12th May 1986 (*Staatsvertrag über die gemeinsame Nutzung eines Fernseh- und Hörfunkkanals auf Rundfunksatelliten*, RuF 3/1986, pp.404-407). The 'north track' or *Nordschiene* was signed by Lower Saxony, Berlin and Schleswig-Holstein on 20th March 1986 (*Staatsvertrag über die Verbreitung von Fernsehen über Rundfunksatellit*, RuF 3/1986, pp.398-403). Hamburg, the only SPD *Land* to take part in these separate initiatives, became a member of the *Nordschiene*. Both agreements were open-ended to allow the conclusion of an inter-*Land* agreement at a later date. They were each concerned with the award of a TV-Sat transponder to private television channels. More importantly still for private channels, they linked the award of a TV-Sat transponder to the award of local terrestrial frequencies, which had become available following efforts by the Federal Post Office. Terrestrial frequencies give private channels cheap access to audiences at no extra cost to the viewer, and are therefore very attractive.

The signing of these partial agreements was seen as a serious departure from the principle of unity and consensus in West German media policy (see Fuhr, 1986, pp.299-309; Stammeler 1986, pp.3-4). They were also regarded as a threat to the autonomy of those *Länder* which objected to private broadcasting, but could still be reached by TV-Sat transmissions (see Groß, 1986, p.77). Peter Glotz, the SPD whip in the *Bundestag*, called the agreements "den Beginn des Zerfalls der ARD" and stated: "Mit dieser Art Partikularismus droht der bundesdeutschen Medienlandschaft langweiliger Provinzialismus" (Glotz, cit. in *Neue TV-Programmen der "Südstaaten"*, FR 13.5.1986, p.1).

Political and legal reservations about these separate agreements led Lothar Späth (CDU), Prime Minister of Baden-Württemberg, to propose a provisional inter-Land agreement (*Vorschalt-Staatsvertrag*) on 14th April 1986. This would have given both the *Nord-* and *Südschiene* the legitimacy they required, and would have allowed the immediate award of terrestrial frequencies to private channels (Groß, 1986, p.78; *Die ARD begrüßt Vorschlag von Späth*, FR 22.4.1986). Such a provisional agreement would have excluded controversial issues like advertising on HR's third television channel, and would have dealt almost exclusively with TV-Sat by absorbing both the *Nord-* and *Südschiene*. The agreement would also have covered Bins Plus and 3SAT, the funding of public television, and the national distribution of private satellite channels into cable networks. A later agreement (*Rahmenstaatsvertrag*) would then have covered issues of advertising and programme regulation. The Späth plan was generally regarded as a way of establishing operational arrangements before an impending

Constitutional Court case in November, which had been filed against legislation in Lower Saxony allowing private broadcasting (*Niedersächsisches Landesrundfunkgesetz*, MP 6/1984, pp.486-496). This judgement was also expected to make important pronouncements on the status of broadcasting in West Germany.

The *Länder* broadcasting experts drew up a partial agreement on the basis of Späth's model in July 1986, but it was unlikely to be accepted, because the SPD-*Land* of Hesse refused even to take part in negotiations prior to the Constitutional Court's ruling on the Lower Saxony broadcasting law (see *Teilstaatsvertrag zur Neuordnung des Rundfunkwesens*, KuR 25.6.1986, Stand 20.5.1986; *Referenten schlagen Vorstaatsvertrag vor*, FR 1.7.1986). As expected, the issue of advertising on public channels, and more detailed stipulations on the national distribution of private satellite channels, were left to a later agreement (*Rahmenstaatsvertrag*) to be signed by 30th June 1987.

The proposal for a provisional agreement was dropped, primarily because of Hesse's protests, but negotiations continued. A breakthrough was finally achieved on 3rd October, when the prime ministers undertook a unanimous resolution in Hamburg (*Beschluß der Ministerpräsidenten zur Neuordnung des Rundfunkwesens*, FKD 10.10.1986, p.1). This provided a basis for any future inter-*Land* agreement, and took account of any rulings to be made by the Constitutional Court in November. It was agreed to award two TV-Sat transponders to private channels on the basis of the *Nord-* and *Südschiene*, and a further two transponders to public channels. The resolution also approved the

award of local terrestrial frequencies to private channels. The prime ministers declared that they were willing to accept 80 to 100 minutes a day of radio advertising on WDR's radio channels, and the prospect of licence fee funding for the *Land* authorities, responsible for licensing and supervising private channels. Most significantly, Hesse agreed to give up its opposition to an inter-*Land* agreement once the Constitutional Court had delivered its judgement in November (*Erklärung des hessischen Ministerpräsidenten*, FKD 10.10.1986, p.1).

### 3.7 Constitutional clarity

Any further decisions on an inter-*Land* agreement were put on hold pending the Constitutional Court's ruling on the constitutionality of the Lower Saxony broadcasting law (see *Niedersächsisches Landesrundfunkgesetz*, MP 6/1984, pp.487-496). The *Länder*, as on many occasions in the past, were unable to make decisions in the spirit of federalism. Once more it was left to the Constitutional Court to define what was constitutionally possible within broadcasting (see Berg, 1986, p.689).

Although the court case dealt specifically with the legality of the Lower Saxony media law of 23rd May 1984, the Court was expected to make rulings on broadcasting in general, and in particular, on the role of public broadcasting and private broadcasting respectively, within a dual system. The constitutionality of private broadcasting itself was never in doubt, as the Court had never ruled that it was

unconstitutional in its earlier rulings of 1961, 1971, and 1981 (see Chapter 2).

However, in 1981 the Court had adapted its earlier interpretations on how private broadcasting should be organised. In the rulings of 1961 and 1971, it had stipulated that private broadcasting be organised in such a way that plurality of opinion was reflected in its internal supervisory structures and in its programming (see *Urteil des Bundesverfassungsgerichts vom 28. Februar 1961 (Fernsehurteil)*, in Lehr & Berg, 1971, pp.221-256, here p.255; *Urteil des Bundesverfassungsgerichts vom 27. Juli 1971 in dem Verfahren zur Überprüfung der Verfassungsmäßigkeit der Mehrwertbesteuerung der Rundfunkgebühren - Mehrwertsteuerurteil*, in MP 7 & 8/1971, pp.207-236). In 1981 the Court introduced the concept of external pluralism, where diversity of opinion is not reflected within internal supervisory bodies, but in the totality of programmes broadcast (*Urteil des Bundesverfassungsgerichts vom 16. Juni. 1981*, in Ring, 1981, A-III 3, pp.1-25, here p.19). The externally pluralistic model with supervision by pluralistically composed, external supervisory authorities was deemed acceptable by the Court as a way of organising private broadcasting. However, although the Court had sanctioned two different models of broadcasting organisation, it stipulated that overall, the externally pluralistic system had to match the same standards of diversity of opinion and programme range as public broadcasting (p.19).



By 1986 changes in the Court's interpretation of the constitutional position of broadcasting were imminent because so much had changed since 1981. Private broadcasting had become a reality, aided by the emergence of cable and satellite technologies. The Lower Saxony broadcasting law and most of the other laws governing private broadcasting were based on the externally pluralistic system. This made the impending court case an acid test of this broadcasting model. The Court case also provided an opportunity to clear up the controversies surrounding the legality of separate agreements like the *Nord-* and *Südschiene*.

The case had been filed in 1984 by the SPD parliamentary party in the *Bundestag*. The SPD argued that the Lower Saxony broadcasting law failed to secure the independence of broadcasting from the state, and failed to live up to constitutional demands for programme diversity and plurality of opinion in broadcasting (see Wankell, 1986c, p.1).

### 3.7.1 The Constitutional Court's decision

The Court's decision on 4th November 1986 was markedly different from earlier decisions (*Urteil des Bundesverfassungsgerichts vom 4. November 1986 (Viertes Fernsehurteil)*, in FPD 7.11.1986, pp.1-42). Inevitably, its basic findings were still guided by the demands of Article 5. of the Basic Law, which holds that the freedom of broadcasting serves to contribute to the free formation of opinion within society (p.17). However, the judgement was also pervaded by a degree of pragmatism which took into account the recent liberalisation

of the West German broadcasting environment. Overall the Lower Saxony media law was found to satisfy constitutional demands, but some clauses of the law were declared unconstitutional.

Those clauses which allowed the Lower Saxony chancellory, or effectively the *Land* government, an evaluative role in the award of broadcasting licences, at the expense of the *Landesrundfunkausschuß*, the supervisory authority for private broadcasting in Lower Saxony, were declared unconstitutional (p.31pp). In this respect nothing had changed, as earlier constitutional rulings had always stipulated that broadcasting must be free of state interference. Amongst those clauses declared unconstitutional by the Court were the stipulations relating to balance in broadcasting (p.22). The Lower Saxony law had stipulated that each individual channel must provide balanced programming (internal plurality), if balance was not guaranteed by the existence of other broadcasting channels (external plurality) (Article 15). This was criticised by the Court, because there were no qualitative or quantitative criteria to distinguish when a channel had to be balanced in itself, and when balance could be achieved in combination with other broadcasting channels (p.22). The Court put forward the example of the Schleswig-Holstein media law as a possible solution (p.22). Here, external plurality operates if in addition to the public channels, four West German generalist channels, distributed by the same technology, are available to the public (*Rundfunkgesetz für das Land Schleswig-Holstein*, 27.11.1984, MPD I/1985, pp.32-41, Article 11, Clause 2).

Indirectly, the Court also referred to the *Nordschiene* and the *Südschiene*. The Court concluded that the constitutional principle of "bundesfreundliches Verhalten" between the Länder on matters which affect them all, required that they cooperate in regulating nationally distributed satellite channels (p.38; see also Berg, 1986, p.691). In the case of direct broadcast satellites, like TV-Sat, the Länder were obliged to come to a unanimous agreement, because DBS channels can be received directly in the home, and therefore influence all Länder (p.38). However, the issue of a national supervisory authority was left open. This ruling effectively meant that the the *Nord-* and *Südschiene* were unconstitutional, because they imposed private broadcasting against the wishes of those Länder, like Hesse, who were opposed to it.

In declaring some clauses of the Lower Saxony law to be unconstitutional, the Court had given further guidance to the Länder on legislation for private broadcasting. However, those parts of the ruling which attracted most attention related to the dual system of public and private broadcasting, a term used by the Court for the first time.

The Court reaffirmed the special status of broadcasting, outlined in earlier judgements (p.18). These had maintained that access to broadcasting, unlike the press, was limited by lack of frequencies and high costs (p.18). In spite of satellite and cable, the number of television channels available to all would continue to be small, because of dependence on terrestrial distribution. What had changed

was the emergence of a European broadcasting market involving foreign satellite channels which could be received directly in the home (p.18). This consideration was to play a key role in the Court's reinterpretation of broadcasting's special status.

Outlining the dual system of broadcasting, the Court proceeded to undertake "eine Art Arbeitsteilung und qualitative Abstufung" (Stock, 1987a, p.6) between public and private broadcasting, placing different demands on each system. This was the nub of the whole judgement. Where the Court had previously demanded that private and public broadcasting systems separately satisfy the demands of the Basic Law as regards the provision of a broad range of programming and the reflection of the full scope of opinion within society, it now accepted lower standards for private broadcasting within the context of broadcasting as a whole.

The reasons given by the Court for regarding broadcasting as a whole, rather than as two separate systems, were based on what it saw as the realities of the existing situation. In the Court's view, balanced diversity of opinion could be undermined by channels directly available in the home, and by foreign satellite channels, which are largely removed from the jurisdiction of *Länder* legislation (p.19). In this respect the concept of "gleichgewichtige Vielfalt" could only ever be a "Zielwert" (p.19). In its appraisal of the emergence of a European market in broadcasting, which might distort West German standards on diversity, the Court took the economic prerogatives of domestic private broadcasters into account. It stated that private

broadcasting could not be subjected to legislative conditions which would make its existence difficult, if not impossible (p.19). To all intents and purposes it appeared as if the Court was accepting the supremacy of economic reasoning above constitutional principles.

The Court's acceptance of the economic priorities of private broadcasting formed the basis of new assumptions, enshrined in the concept of a dual system. The totality of broadcasting channels in West Germany would now have to comply with constitutional demands (p.19). Prior to this the totality of private channels had had to match the same standards of plurality and breadth as public broadcasting.

Within such a dual system, public service broadcasting was required by the Court to undertake the basic provision of services or "die unerläßliche 'Grundversorgung'" (p.19). In fact *Grundversorgung* implies much more than basic provision. In undertaking *Grundversorgung*, the public system was seen to satisfy essential functions for democracy and cultural life in West Germany (p.19). As with previous Court rulings the so-called "klassische(r) Auftrag" of broadcasting, was broadly defined. In addition to news, entertainment and the formation of political and public opinion, the Court placed particular emphasis on broadcasting's cultural responsibilities (p.19). This amounted to an affirmation of the tasks which public service broadcasting has always been constitutionally obliged to fulfil. More importantly, it meant that certain types of programming, such as entertainment, could not be extricated from public service

broadcasting. *Grundversorgung* was not the same as *Minimalversorgung* (see Berg, 1986, p.800)

The Court gave several reasons for imposing the obligation of *Grundversorgung* on public broadcasting. It pointed out that for many years to come public broadcasting would be the only service to reach the whole country by terrestrial means (p.19). Furthermore it was the Court's view, that public broadcasting was more capable of fulfilling this function than private broadcasting, because it is not so dependent on high ratings, necessary to secure advertising revenue (p.19). The Court added that the emergence of private channels, and a European broadcasting market, made it all the more important that the classical role of broadcasting be reinforced by national terrestrial channels (p.19). "Nach der Lage der Dinge", this role was seen to belong to the public channels.

The Court recognised that the imposition of *Grundversorgung* on public broadcasting would have consequences for public broadcasting's future existence. The Court stated that public broadcasting and its funding by the licence fee was legitimated by its classical function and the provision of basic services (p.20). To enable public broadcasting to satisfy these demands, the Court stipulated that it was necessary for the *Länder* to guarantee public service broadcasting's technical, organisational, staffing, and financial requirements (p.20).

Turning its attention to private broadcasting, the Court stated that private channels were unlikely to satisfy constitutional demands for the provision of a comprehensive range of information. First, dependence on distribution by cable and satellite meant that private channels were only available to a small section of the population. This limited their ability to contribute fully to the dissemination and formation of public opinion (p.18). Second, there were too few private television channels to reflect the plurality of views within society (p.18). Most damning was the Court's analysis of economic factors which diminished the ability of private channels to offer a full range of information, opinion, and culture. The Court recognised that private broadcasting's reliance on advertising revenue, led to a necessity to achieve high ratings by showing cheap popular programming (p.18). Under these circumstances it was accepted that private channels would be unlikely to transmit expensive minority and cultural programming, because these programmes are not seen by sufficiently large audiences to attract advertisers (p.18). However, the Court was prepared to accept the negative effects of funding by advertising on private broadcasting, because it felt that there was not sufficient alternative income available (p.30).

In outlining the deficits of balance and breadth structurally inherent in private broadcasting, the Court had distanced itself from arguments claiming that private broadcasting brought more choice and better quality. As with earlier judgements, it stated that the regulation of private broadcasting could not be left to the market because a market in broadcasting was unlikely to occur in the

foreseeable future, and because such a solution was incompatible with constitutional demands (p.20).

However, having shown up the deficiencies of private broadcasting, the Court then proceeded to reduce the constitutional demands placed on it. As long ("solange und soweit") as public broadcasting fulfilled the obligation of *Grundversorgung*, the Court felt it was justifiable to reduce constitutional demands for breadth of content and for balanced diversity of opinion in private broadcasting (p.20). The reduced demands for private broadcasting were therefore linked to the public system's successful attainment of its constitutional role, although the Court reaffirmed an earlier judgement of 1981, which had ruled that the balanced output of public stations could not compensate for the imbalances of private broadcasting (p.20). However, if imbalances in private broadcasting were not serious, they were deemed acceptable by the Court, provided that the diversity of existing opinion was fully expressed within public broadcasting channels (p.20).

For a private system of broadcasting, operating under external supervision by independent authorities, the Court insisted on a *Grundstandard*, or basic level of balanced diversity (p.20). Under this standard, minor imbalances were acceptable, provided that there were sufficient safeguards to prevent major imbalances to the diversity of opinion (p.20). According to the Court this entailed:

die Möglichkeit für alle Meinungsrichtungen - auch diejenigen von Minderheiten -, im privaten Rundfunk zum Ausdruck zu gelangen, und den Ausschluß einseitigen, in hohem Maße ungleichgewichtigen Einflusses einzelner Veranstalter oder Programme auf die Bildung



der öffentlichen Meinung, namentlich die Verhinderung des Entstehens vorherrschender Meinungsmacht. (p.20)

In achieving such a standard the legislator had to impose material, organisational, and procedural rules (p.20). The Court drew special attention to the legislator's role in preventing the concentration of broadcasting in the hands of a few, because such developments were difficult to reverse once started (p.20). It referred in particular to dominant multi-media concerns and double monopolies of combined press and broadcasting interests in local and regional areas (p.28).

On the subject of external supervision of private broadcasting, the Court stated that the system of internal supervision, as practised in public broadcasting, was more suitable for securing plurality of opinion, in spite of its weaknesses (p.26). External supervisory authorities could only ever be reactive, and had less influence over programming because they were not involved in scheduling and the production process (p.26). However, external supervision, in spite of its defects, was still constitutional, because internal supervision, in the Court's opinion, would have removed "das Grundlelement privatautonomer Gestaltung und Entscheidung" of private programme providers. The Court seems therefore to have been thinking once more of the economic success of private channels rather than reflecting on earlier constitutional rulings (see p.26).

### 3.7.2 Reactions and interpretations

At first sight the Court's ruling appears to have placed public broadcasting in a privileged position as the supplier of *Grundversorgung*. However, the fulfilment of this role clearly liberated private broadcasters from the onus of providing a broad range of programming, and of portraying the full breadth of opinion within society. At the same time the public service concept had been reinforced. Closer inspection of the judgement, however, reveals a number of unresolved issues, which arose from a lack of precision in the Court's pronouncements (see Stock, 1987).

The Court's decision was claimed as a victory by both sides and interpreted accordingly (see Hoffmann-Riem, 1987, p.19; Janssen, 1986b, p.1; Fuhr, 1987, p.145). In the eyes of the supporters of public broadcasting, the judgement constituted a guarantee of existence and further development which prevented public broadcasting from being cut back in its programming, funding, or plans for further expansion (see Berg, 1986a, p.800; Berg, 1987, p.269). *Grundversorgung* was seen to include all forms of programming, and all types of technical distribution (Berg, 1986, p.690). Furthermore, private broadcasting's existence, especially in terms of reduced constitutional demands of plurality, was seen to depend on the continued existence of public broadcasting (see Berg, 1986a, pp.801-2). At the other extreme, some, like the West German Ministry of the Interior, interpreted the concept of *Grundversorgung* in such a narrow way that it would have been possible to strip public broadcasting of those areas of broadcasting

which were not deemed to come under the rubric of *Grundversorgung* (1986, pp.21-24). This included pay television, specialist narrowcast channels, videotext, satellite television channels like Eins Plus and 3SAT, the national distribution of existing third television channels, and further radio networks (Bundesinnenministerium, 1986, p.21).

These reactions to the judgement reveal the differing conclusions drawn from the Court's pronouncements. Most attention was directed at the concept of *Grundversorgung*, a term which in itself was not new, but to which the Constitutional Court had given its own particular definition (see Stock, 1987, p.16pp). Subsequent evaluations of *Grundversorgung* ranged from partial provision in a compensatory way to make up for the deficits of private broadcasting, to full public provision of all types of programmes via all types of technologies. These differences clearly showed the lack of clarity and the vagueness in the Court's initial definition.

It was clear that *Grundversorgung* did not mean *Minimalversorgung* (Berg, 1986a, p.800), because the Court had mentioned all types of programming including entertainment, news, information, and especially culture (see Hoffmann-Riem, 1987, p.22). Accordingly, these individual components, in particular entertainment, cannot be taken away from public broadcasters. ARD and ZDF cannot be reduced to the status of "Nischensender", but, as ZDF's *Programmdirektor* Alois Schardt emphasised to me in an interview, they must continue to cater for both majority and minority tastes (Interview, 11.8.1987). The emphasis on culture was clearly a reference to the failings of private

broadcasting, and perhaps also, a warning against commercial tendencies in public broadcasting (see Berg, 1987, p.272). According to Schardt, *Grundversorgung* is,

die Präzisierung des Auftrages, den die Rundfunkanstalten haben, gemäß ihren eigenen Gesetzen, und das heißt, daß die Grundversorgung in die eine Richtung die Programmmischung nicht verändert, sagen wir zugunsten von Massenattraktivität, und in die andere, daß die Rundfunkanstalten nicht eine Zusatzversorgung zu machen haben für diejenigen Bereiche, die die privaten Anbieter nicht bedienen. (Interview, 11.8.1987)

Whether *Grundversorgung*, also included further regional or local programming, as Berg maintains, was at this stage unclear, as the Court had made no mention of public broadcasting's obligation to provide additional regional or local services (see Berg, 1986, p.690). In fact, apart from listing the programme components of *Grundversorgung*, the Court made no reference to the amount of time devoted to each programme component, thus implying that this was left to the public broadcasters.

Some confusion arose because the Court had stated that public broadcasting was capable of fulfilling *Grundversorgung* because its programmes are distributed terrestrially, and are therefore available in the majority of homes. The emphasis on terrestrial distribution was a worrying aspect, because other means of distribution, like satellite, might eventually replace terrestrial broadcasting as the main source of television programmes, thus making *Grundversorgung* unnecessary (see Dieter Stolte, ZDF Intendant, in *Dem Pathos folgt die realistische Einschätzung zum Bundesverfassungsurteil*, FK 14.11.1986, p.9). Linking *Grundversorgung* with terrestrial distribution would also affect any technical, financial, staffing, and

organisational measures which the legislator was constitutionally obliged to undertake in order that public broadcasting could fulfil *Grundversorgung*. If satellite and cable channels were not part of basic provision by public broadcasting, they were not entitled to these safeguards (see Kammann, 1986a, p.3). According to Ernst Fuhr, ZDF's legal expert, the Court's reference to terrestrial distribution did not confine public broadcasting to this technology of distribution alone (1987, p.153). In his view, the Court's reference to terrestrial distribution was purely descriptive, and subordinate to the more important aspect of programme content (Fuhr, 1987, p.153; see also Berg, 1987, p.273).

There were also differences of opinion about the degree of guarantee given by the Court to public broadcasting as the supplier of *Grundversorgung*. According to Berg, the Court's linking of *Grundversorgung* to public broadcasting's organisational, staffing, technical, and financial requirements, constituted a guarantee of existence and further development (1986, pp.690-691; 1986a, p.800). The public broadcasting system could not be frozen at existing levels or limited in terms of funding, access to technologies of distribution, or programming (see Berg, 1986, p.691). Klaus Berg also believed that the obligation of *Grundversorgung*, now made it impossible for the *Länder* to deny or delay further licence fee increases, in order to improve the chances of private broadcasting's success (1986, p.690; 1986a, p.800;).

Wolfgang Hoffmann-Riem, however, is more selective in his interpretation of any guarantees given by the Court, referring to a "Garantie der bisherigen Funktionsfähigkeit" (1987, p.22; see also Heßler cit. in *Reaktionen auf BVG-Urteil überwiegend positiv*, 1986, p.1). This, in his view, did not include the right to become involved in all forms of broadcasting, but the ability to function within the existing framework. In this sense public broadcasting had been given a limited guarantee of further development which would allow it to function within the context of changing conditions, and to adapt to future developments, especially to those developments associated with the Europeanisation of broadcasting (1987, p.22). If constitutional guarantees pertained to existing public service obligations, it was up to the legislator to decide whether other forms of service, which were not part of *Grundversorgung*, should be opened up to public broadcasting (Hoffmann-Riem, 1987, p.23).

A further issue concerned the duration of *Grundversorgung* (see Stock, 1987, p.14). According to some, the demands made of public broadcasting could be reduced, if private broadcasting improved its ability to reflect the full scope of opinions within society, or became more widely available (see Hartstein, 1986, p.4; see also Jürgen Doetz cit. in *Karlsruhe und die Folgen*, KuR 10.1.1987, p.15). However, it should be remembered that the Court had rejected a compensatory role for public broadcasting in balancing out the imbalances of private broadcasting (p.20; see also Berg, 1987, p.270). Furthermore, the structural deficits of private broadcasting, caused by its reliance on advertising income, would seem to imply that this factor played a

greater role in the Court's decision to support the continuance of *Grundversorgung* by public broadcasting (see Berg, 1987, p.270).

In reducing the demands of diversity and balance for private broadcasting, the Court had clearly linked the existence of private broadcasting to the satisfactory fulfilment of *Grundversorgung* by public broadcasting. This fact is confirmed by ZDF *Programmdirektor* Alois Schardt, who emphasises the existential links between the two, rather than the compensatory function of public service programmes:

Also es ist in diesem Urteil, in dem die Grundversorgung vorkommt, ja auch festgelegt, daß die Privaten nur deshalb so sein können, wie sie sind, weil es die öffentlich-rechtlichen gibt. Das heißt, es gibt eine Interdependenz zwischen den Privaten und den öffentlich-rechtlichen, nicht in der Programmgestaltung, sondern in der Existenz. (Interview, 11.8.1987)

According to NDR's legal expert, Klaus Berg, this existential relationship ought to have made the *Länder* and private broadcasters more committed to a stronger public system:

weil nur so eine Rechtfertigung für den größeren Spielraum bei der Programmgestaltung hinsichtlich Vielfalt und Ausgewogenheit besteht, der sich wiederum in verminderten Kosten und höheren Einnahmen niederschlägt. (1986, pp.689-670; see also Hoffmann-Riem, 1987, p.22)

Some felt that the Court had paid insufficient attention to how a dual system should function in practice, and that it had capitulated to technological and economic developments and the private lobby (see also Heßler in *Reaktionen auf BVG-Urteil überwiegend positiv*, KuR 8.11.1986, p.12; Hoffmann-Riem, 1987, p.20). It was argued that insufficient attention had been paid to the communications needs of society, and that the Court had failed to take the principle of

freedom of communication, the public interest, and the integrative function of the media fully into account (see Hoffmann-Riem, 1987, p.19; Stock, 1987, p.16). Instead, it was argued that the Court, by reducing the demands made of private broadcasting, was supporting the principle of economic freedom and the way commercialism and market forces function in the media (see Kammann, 1986a, pp.3-4; Hoffmann-Riem, 1987, p.19; Stock, 1987). Some spoke of the danger of a "Zwei-Klassen-Rundfunk" (see Hans Wolfgang Heßler, media spokesman of the Evangelical Church cit. in *Reaktionen auf BVG-Urteil überwiegend positiv*, KuR 8.11.1986, p.12), which would allow private broadcasting to concentrate entirely on popular entertainment programmes. This, it was believed, would result in a decline of public broadcasting into a cultural enclave, because it was still required to cater for all types of programme needs (see Kammann, 1986, p.5; Grimm, 1987, p.33).

The problems associated with the judgement which have been touched upon here, serve to underline the vagueness of some of the Court's pronouncements, especially those which dealt with the future role of public broadcasting. A lack of clear definition for the concept of *Grundversorgung*, and the failure of the Court to say anything substantial about the future funding of public broadcasting, were two obvious areas which required further attention. Answers to these and other issues were expected in a further Constitutional Court ruling. This involved a complaint filed by SDR and SWF against the Baden-Württemberg media law (*Landesmediengesetz Baden-Württemberg*, 16.12.1985, in Bauer, Müller-Römer, Posewand, 17.1.2), which forbade public broadcasters from undertaking any further expansion into



regional or local broadcasting, text services, and specialist narrowcast services. The law had also prohibited advertising in any local and regional public broadcasting programmes. This had been justified on the grounds that the interests of private broadcasters had to be protected. The case provided an acid test case for the argument that public broadcasting could not be excluded from an area of broadcasting because of the structural and programme deficits inherent in private broadcasting. The prospect of a favourable decision for public broadcasting was good, because the Court had just warned against the danger of concentrating broadcasting in the hands of a few, placing particular emphasis on the danger of double monopolies covering television and the press in local areas.

### 3.8 Stumbling blocks on the way to a final agreement

The Constitutional Court ruling of 4th November 1986 had given the *Länder* further guidance in their attempt to reach an inter-Land agreement on the reorganisation of broadcasting. It was now clear that the *Nord-* and *Südschiene* would need to be replaced or complemented by a unanimous decision by the *Länder on TV-Sat*. However, TV-Sat was only one stumbling block on the route to a final agreement. The existence and further development of ARD and ZDF, advertising, and the issue of licence fee support for the supervisory bodies of private broadcasting were still a source of division (see Büssow, 1987, p.4).

The SPD *Land* of Hesse, which had constantly been accused of blocking attempts to conclude an inter-*Land* agreement, was not slow to react to the Court's ruling, seeing the judgement as vindication of its earlier objections (see "*Eckpunkte*" für *Medienstaatsvertrag vorgelegt*, FR 14.11.1986). In November it put forward a series of proposals for an inter-*Land* agreement (*Eckpunkte für einen Staatsvertrag über den Satellitenrundfunk*, MP 11/1986, p.739-744). These recommended the establishment of a national pluralistic authority to supervise and license nationally distributed satellite channels (p.740). Such an authority would also have been responsible for awarding local terrestrial frequencies to national programme providers (p.742). On the subject of advertising on HR's third television channel, there was a hint of compromise. Hesse insisted that it was up to the legislator or HR to decide the extent of advertising on the third channel, but the degree to which advertising capacity on the third channels was used would depend on the level of licence fee support sanctioned by the *Länder* (p.744).

The CDU/CSU *Länder* were intent on reaching a final decision on the inter-*Land* agreement at the next meeting of the *Länder* prime ministers on 18th December 1986. This urgency was driven not so much by a desire to sort out the problems of TV-Sat, but by the wish to find approval for the award of local terrestrial frequencies to private channels, an aspect which had also been covered by the *Nord-* and *Südschiene* (see Jakob, 1986a, p.3). Impatience on the part of the CDU/CSU resulted in threats to cancel inter-*Land* agreements both on the licence fee and on the equalisation of funding between the public

stations, if no decision was reached by the 18th December (see Janssen, 1986c, pp.1-2; *Kündigung der Gebührenverträge als Druckmittel*, FR 2.12.1986).

Cancelling the licence fee agreements would have had serious implications for the principle of uniform licence fees throughout West Germany, and would also have affected the financial status of ZDF, which receives 30% of the television licence supplement. Furthermore, the existence of the smaller public stations was threatened by both the collapse of a uniform fee, and by the collapse of the equalisation agreement, which regulates financial subsidies from the larger stations to the smaller stations of SFB, RB and SR. The CDU/CSU *Länder* announced that the licence fee agreements would be cancelled "vorsorglich" if no agreement was reached on 18th December (Janssen, 1986c, p.2; *Wollen Unionsländer Gebührenstaatsvertrag auf jeden Fall kündigen?*, FR 11.12.1986). If there was no agreement by 31st March 1987, they threatened to cancel the equalisation agreement also (FR 11.12.1986).

The SPD *Länder* of North Rhine-Westphalia, Hesse, the Saarland, and Bremen countered these threats by announcing their intention of ratifying a separate equalisation agreement if negotiations broke down (*Wollen Unionsländer Gebührenstaatsvertrag auf jeden Fall kündigen?*, FR 11.12.1986). This would have secured the future of RB and SR by replacing equalisation with subsidies from WDR and HR (*Rundfunk-Staatsvertrag erst im neuen Jahr?*, FR 9.12.1986). Furthermore, a separate agreement would have allowed a rival *Westschiene* to compete

for TV-Sat transponders with the *Nord-* and *Südschiene* (Janssen, 1986c, p.2; FR 9.12.1986).

As expected no agreement was reached on 18th December. Bavaria, Baden-Württemberg, Lower Saxony and the Rhineland-Palatinate cancelled the 1974 inter-*Land* licence fee agreement, which sets out the procedure and conditions of the licence fee. They also cancelled the 1982 agreement, which sets the level of the licence fee. Both cancellations would have taken effect on 31st December 1987 (see *Und weiter wird gedroht und gedrückt*, FR 22.12.1986; *Gebührenverträge: Auch Niedersachsen kündigt*, FR 29.12.1986). The cancellation of these agreements did not render them null and void, as they continued to be valid for the remaining *Länder*. Those who had decided to cancel would have had to set their own level of licence fee. Those CDU/CSU *Länder* which had cancelled the licence fee agreements, stated that their actions should not be over-dramatised. They were merely an attempt to pressurise the SPD *Länder* into signing an inter-*Land* agreement on the reorganisation of broadcasting (*Und weiter wird gedroht und gedrückt*, FR 22.12.1986). Indeed it was clear that the cancellations were mainly an attempt to pressurise, rather than a serious threat to the future of public broadcasting. Many issues were already in the process of being resolved, but details still had to be worked out.

It was already accepted that the supervisory authorities of private broadcasting should receive a proportion of the licence fee, to enable them to carry out their duties (see Jakob, 1986a, p.5). This issue had been brought up by Bavaria, which with reference to the Constitutional

Court, argued that the the link between quality in public broadcasting and the justification of licence fee funding, was also justification for licence fee support for the authorities which supervised private broadcasting (see "*Grundversorgung*" in der Substanz bereits umstritten, KuR 12.11.1986, p.15). Consequently, if private broadcasting was to be encouraged to cater for minorities and provide cultural programmes, and if advertising was not conducive to this type of content, as had been argued by the Court, then private broadcasting should be allowed to benefit from the licence fee at least indirectly. It was argued that licence fee support would help the supervisory authorities to influence private broadcasting in a positive way. Similar steps had already been undertaken in Bavaria, where the state had awarded the Bavarian *Landesmedienzentrale* a subsidy of DM2 million to encourage religious, social, and cultural programming (see Hartstein, 1986, p.5; see also Edmund Stoiber, head of the Bavarian State Chancellory in, "*Grundversorgung*" in der Substanz bereits umstritten, KuR 12.11.1986, p.15). Where the SPD and CDU/CSU *Länder* differed was over the amount of licence fee to be given to these authorities, and how this money should be used. The SPD *Länder* disagreed with the view of Lower Saxony and Bavaria that private broadcasters should benefit directly from the licence fee (see *Und weiter wird gedroht und gedrückt*, FR 22.12.1986).

Another source of dispute was North Rhine-Westphalia's claim, as the largest *Land*, to a transponder on TV-Sat (see Büssow, 1987, p.4; Schleyer, 1987, p.3). This would have given it parity with those *Länder* who had signed the *Nord-* and *Südschiene*, and would have

allowed it to award the transponder to either a private channel, or to a joint venture involving WDR and private interests (see FR 22.12.1986). The CDU/CSU *Länder*, however, supported the idea of two channels each to be shared between the private and public channels, rather than a solution which would have given three transponders to private interests and two to public channels (FR 22.12.1986).

A further dispute concerned the licensing of national satellite channels. Hesse insisted that this should be done by a national authority (see *Eckpunkte für einen Staatsvertrag über den Satellitenfernsehen*, MP 11/1986, pp.739-744). However, Lothar Späth, the CDU Prime Minister of Baden-Württemberg, wanted licences to be awarded under existing *Land* legislation (*Und weiter wird gedrückt und gedroht*, FR 22.9.1986).

By March 1987 agreement seemed close at hand (*Ein paar Stolpersteine liegen noch im Weg*, FR 12.3.1987). An attempt was made to reach a compromise by combining two draft agreements, previously put forward by both political camps (*Entwurf der unionsregierten Länder vom 16.12.1986*, FKD 20.2.1987, pp.1-9; *Entwurf der SPD-regierten Länder vom 5.2.1987*, in FKD 20.2.1987, pp.1-9). These negotiations paid off. The inter-*Land* agreement on the reorganisation of broadcasting was finally signed by the *Länder* prime ministers in Bonn on 12th March 1987 (*Staatsvertrag zur Neuordnung des Rundfunkwesens*, KuR 25.4.1987, pp.18-26). Subject to ratification by all the regional *Land* parliaments, it would be enacted on 1st January 1988.

### 3.8.1 The inter-Land agreement on the reorganisation of broadcasting

The agreement signed by the prime ministers in March 1987 forms the basis of a dual system of private and public broadcasting in West Germany (*Staatsvertrag zur Neuordnung des Rundfunkwesens*, in KuR 25.4.1987, pp.18-26; see also *Begründung zum Staatsvertrag zur Neuordnung des Rundfunkwesens*, in KuR 31.5.1987, pp.2-16). It constituted an attempt to secure both the existence and further development of public broadcasting, and the chances of success for private broadcasting (see *Präambel*, p.18).

In awarding TV-Sat transponders, it was decided to give three out of the five transponders available to private interests (p.18). This was in deference to the SPD, and in particular to the *Land* with the largest population, North Rhine-Westphalia, which had wanted a so-called *Westschiene*, comparable to the *Nord-* and *Südschiene* that had been concluded by the CDU/CSU *Länder* and Hamburg (see *Entwurf der SPD-regierten Länder vom 5.2.1987*, in FKD 20.2.1987, pp.1-9). However, the third transponder on the first satellite was temporarily awarded to ZDF for the transmission of 3SAT, until such time as the SPD *Länder* had decided to whom they would award this transponder (p.18). The fourth transponder on the first satellite was awarded to ARD for the transmission of Eins Plus. However, as long as digital radio did not have a transponder of its own, ARD would be required to vacate the channel from 13.00 to 18.00, to allow the transmission of 17 radio channels (p.19). The fifth available transponder on the second satellite, to be launched at a later date, was awarded to ZDF for the

transmission of 3SAT, provided that the SPD *Länder* awarded a transponder on the first satellite to a private channel (p.19). This was the compromise which the CDU/CSU *Länder* had been forced to accept in order to gain SPD approval for the *Nord-* and *Südschiene* (see Leudts, 1987, p.1).

A large section of the agreement dealt with the existence and further development of public broadcasting. Any doubts about the future of Eins Plus and 3SAT were removed. Both ARD and ZDF were given the obligation of each providing a culturally-orientated TV channel (p.19). For this purpose they were allowed to cooperate with other European programme providers, but no distinction was made between private or public partners. ARD and ZDF were also permitted to participate in pan-European channels, like the now defunct Europa, provided that they did not contribute substantial proportions of programming, and provided that advertising on these channels was not aimed at West German audiences (p.19). However, although the future of Eins Plus and 3SAT seemed secure, a barrier was put up against further public expansion into satellite broadcasting. Any additional nationally distributed public television channels would require political approval in the form of an inter-*Land* agreement (p.19).

The licence fee, and cross-subsidies to small ARD stations, as laid down in the inter-*Land* equalisation agreement, would continue to constitute the main source of funding for public broadcasting (p.19). The licence fee is set by the *Länder* prime ministers, subject to ratification by the *Landtage*. The way the licence fee is set (the



procedure for setting the licence fee is covered in Chapter 6), had proved a controversial issue in earlier negotiations. The CDU/CSU *Länder* wanted to retain the existing system, while the SPD wished to alter it, in order to remove some of the political pressure, which in its view, threatened the future of public broadcasting (see Büssow, 1987, p.4; Schleyer, 1987, p.5). However, the inter-*Land* agreement did little to alter existing arrangements. It was agreed that the financial requirements of public broadcasting would be ascertained every two years (p.20). This would take into account existing and new broadcasting channels, participation in the new technologies, inflation, and the development of advertising and other income (p.20). However, a note attached to the agreement stated that any examination of financial requirements would not include the costs of distributing the ARD third channels on a national basis (p.25). This was an effective barrier against attempts by BR and WDR, in particular, to establish a national presence for their regional third television channels. A further note promised to consider changes to the composition of the KEF (Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten), a highly political body which advises the prime ministers on the level of licence fee increases (p.26). It was agreed that the next licence fee increase would take place on 1st January 1989 (p.26).

In order to give ARD and ZDF a certain amount of parity with private broadcasting, it was decided to permit the insertion of one commercial advertising break within television programmes which lasted more than sixty minutes (p.19). Exceptions to this rule were

possible for sports transmissions (p.19). The agreement also opened up the possibility of introducing advertising to public channels on Sundays and public holidays, provided that this did not result in an increase in advertising income (p.20). This measure obviously took into account the fact that public broadcasting's advertising income might decline, if it was subject to private competition. An extension of the time allowed for advertising would have made up for this shortfall. A note, attached to the agreement, also allowed the public broadcasters to shift radio advertising to digital satellite radio, provided that this did not lead to an overall increase in advertising income (p.26). Sponsored programmes were to be allowed on public television "in der bisherigen Weise", provided they did not serve the economic interests of third parties (p.20). Apart from these concessions, the agreement continued to place television advertising on public channels under the same rules as before; a maximum of twenty minutes a day before 20.00 on the the ARD TV network and ZDF. Advertising on Eins Plus and 3SAT was not allowed (p.20).

The controversy surrounding the introduction of advertising to HR's third television channel was resolved by backdating the freeze on advertising on public channels to 1st January 1987 (p.20). This prevented the introduction of advertising to other ARD third television channels. However, HR was exceptionally allowed to continue the transmission of advertising on its third television channel until it had been awarded sufficient licence fee income to fund its new fourth radio network, but was expected to cease advertising on the third TV channel by 1991 (p.25). This was a curious solution, because

HR had never justified the introduction of advertising to its third television channel as a means of funding its fourth radio network.

According to Bernd-Peter Arnold, head of radio regionalisation at HR:

Die Werbung im Dritten Programm ist nicht eingeführt worden, um das vierte Hörfunkprogramm zu finanzieren. Das ist nur ein Teil der Wahrheit. Aber das ist jetzt Politik. (Interview, 26.8.1987)

The other contentious advertising issue had involved the level of advertising on WDR radio. It was decided to freeze radio advertising on all ARD stations from 1st January 1987 (p.20). However, each ARD station was allowed to broadcast 90 minutes of radio advertising daily. Although this provided a solution for WDR, it, together with the stipulations on advertising on the third television channels, removed a substantial area of decision-making from the autonomous internal ARD supervisory bodies (see Kammann, 1987, p.4).

The remainder of the agreement dealt with nationally distributed private broadcasting channels. It was decided to use two per cent of licence fee revenues to fund the independent supervisory authorities of private broadcasting and access channels (p.20). For a period of four years this money would also be used to fund an increase in the availability of terrestrial frequencies for the reception of private broadcasting channels (p.20). Private broadcasters could not be directly funded from the licence fee, but the subsidy towards the establishment of a terrestrial infrastructure constituted indirect support, because it increased the number of viewers available to private channels, and therefore made them more attractive to advertisers. The decision also freed private broadcasters from

funding the supervisory authorities through levies. Amendments to the existing licence fee agreements to allow these changes effectively nullified the cancellations of the inter-*Land* licence fee agreements, submitted earlier by Baden-Württemberg, Bavaria, Lower Saxony, and the Rhineland Palatinate (p.24).

According to the inter-*Land* agreement, private broadcasting channels were to be licensed on the basis of *Land* law, rather than by a central authority, as had been proposed by Hesse (p.21). The task of licensing channels from other *Länder* or countries, and supervision of programme content rested with the supervisory authorities in each *Land* (p.23). The clauses on advertising mirrored existing *Land* legislation; twenty per cent of broadcast output daily, in blocks, with a break permitted within programmes which lasted longer than 60 minutes (p.21). Sponsorship was permitted, if editorial content exhibited no direct relationship with the economic interests of the sponsor (p.21).

The stipulations on plurality of opinion in nationally distributed private broadcasting channels reflected the demands made by the Constitutional Court in November 1986. Private channels had to reflect existing diversity of opinion "im wesentlichen". Within generic channels, adequate access had to be given to the "bedeutsamen" opinions within society, and minority viewpoints had to be taken into consideration (p.21). Taking its lead from the Constitutional Court, the agreement stipulated that each individual channel would have to exhibit diversity of opinion if there were fewer than three separate,

domestic, nationally available, private, generic channels. If there were three or more generic channels, plurality of opinion would be judged from the totality of channels available, unless the supervisory bodies for private broadcasting stipulated otherwise (p.21). In order to counter concentration of ownership private programme providers would only be allowed one generic channel and one specialist narrowcast channel each in both radio and television (p.21). This stipulation also applied to major shareholdings (above 25%) by individual companies or their subsidiaries in individual channels (see p.21). A further legacy of the Constitutional Court's ruling was the stipulation that in the case of fewer than three nationally available, private, generic channels, the programme provider had to exclude the possibility of one-sided influence on the formation of public opinion. This could take place either in the form of a programme committee with effective influence on programme content, or in the case of consortia, like SAT 1, by agreements which excluded dominant influence by individual consortium members (p.22).

The programme rules for nationally distributed private channels mirrored legislation passed by the *Länder*. Few of the rules are binding. Private channels are expected to transmit adequate amounts of information, culture, and education, and to contain a considerable proportion of domestic and European productions (p.22). In a departure from practice at ARD and ZDF, the churches are only entitled to transmission time on request, and can be charged for the costs of transmission (p.22). The stipulations on news and current affairs were more concrete in accordance with constitutional demands. News

must be impartial, truthful, and clearly separated from editorial comment (p.22). The agreement contained rules to prevent programmes which encouraged racial hatred, violence, or which contained pornographic content (p.22). It also contained specific rules about the type of programmes which could be broadcast when children or young people might be watching (p.22).

### 3.8.2 Reactions to and evaluation of the the inter-Land agreement

The signing of the inter-Land agreement marked the end of three years of hard negotiations between the *Länder*. As with most compromises no-one was completely satisfied with the end result, but the principle of cooperative federalism had just about survived (see Lafontaine, 1987, p.3). Speaking on behalf of the public broadcasters, SDR *Intendant* Hans Bausch told me that the agreement was "kein Meisterwerk der Legislative" but "ein Modus Vivendi, also eine Art für das Weiterexistieren, kein Friedensvertrag, sondern ein Waffenstillstandsvertrag" (Interview, 29.7.1987). Andreas Schardt, *Justiziar* at SAT 1 told me, "Mit dem Staatsvertrag kann man leben" (Interview, 5.8.1987). By all accounts the public broadcasters were happy with the final agreement, and private broadcasters could live within its confines (see Hilf, 1987a, p.20; Lafontaine, 1987, p.3).

To a large extent the agreement had been shaped by the Constitutional Court's decision in November 1986, which laid down conditions which could not be ignored by the negotiators, especially in respect to plurality of opinion in a dual system of broadcasting

(see Kammann, 1987, p.3; Lafontaine, 1987, p.3). Without the Constitutional Court's ruling it is doubtful whether the inter-Land agreement, if it had been concluded at all, would have been so advantageous to public broadcasting. According to Kammann, much of the credit for the shape of the final draft lay with the SPD *Land* of Hesse, which had refused to be browbeaten by CDU/CSU demands (1987a, p.4). By contrast, the attitude of the other SPD *Länder* had been lacklustre, and more intent on limiting damage to public broadcasting than on influencing the future shape of private broadcasting.

Looking back over three years of negotiation, public service broadcasting had secured a great deal more from the agreement than would have initially been thought possible. Its existence and further development was to a large extent secured, especially as the threat of differing licence fee levels had now receded. The retention of a universal licence fee and the equalisation agreement reduced the threat of the collapse of public broadcasting, and was especially important for the future survival of the smaller ARD stations. However, the prospect of regular licence fee increases was by no means guaranteed, as the *Länder* had agreed only to check the financial requirements of public broadcasting on a regular basis. This has implications for the guarantees of existence and further development contained in the agreement, and these were succinctly put to me by ZDF *Programmdirektor*, Alois Schardt:

Ich sehe eine echte Bestandsgarantie, die immer auf Nachsicht sieht, die Chance der Fortentwicklung, denn man kann nur bestehen, wenn man sich fortentwickeln kann. Die Fortentwicklungsgarantie ist in der Form nicht gegeben, sie ist nur, wenn Sie so wollen, in der Bestandsgarantie immanent. In dem Rundfunkstaatsvertrag, steht drin, daß sich alle zwei Jahre die Ministerpräsidenten sich

vergewissern, ob wir eine Gebührenerhöhung brauchen. Sie haben nicht gesagt, wir werden Ihnen eine geben. (Interview, 11.8.1987)

Although the rules on advertising remained essentially the same as before, the separate clauses on advertising on HR's third television channel, the alterations to the amount of advertising on radio, permission to insert commercial breaks, and the possibility of the eventual introduction of advertising on Sundays and public holidays were important concessions. The inter-*Land* agreement had also brought clarity about the future of Eins Plus and 3SAT. Both ZDF and ARD had gained access to a transponder each on TV-Sat. Although ZDF was only temporarily awarded a transponder on the first satellite, in anticipation of the SPD *Länder* nominating a third private broadcasting channel, it seemed doubtful whether a third transponder would eventually go to private interests, since the West German advertising market is believed by some to be unlikely to be able to support three national private channels (see Leudts, 1987a, pp.1-2). According to Kammann, the award of a third channel to private interests was merely an attempt to save face for North Rhine-Westphalia (1987a, p.5).

However, not all the stipulations of the inter-*Land* agreement found favour with the public stations. ARD criticised the decision to fund the supervisory bodies of private broadcasting from the licence fee (see *ARD-Hauptversammlung bekräftigt Zustimmung zum Medien-Staatsvertrag*, KuR 1.3.1987, p.10). According to Bausch, ARD and ZDF could have initiated constitutional proceedings against this clause on the grounds of misuse of the licence fee, but this was rejected



because it might have endangered the inter-Land agreement with far worse results for public broadcasters (Interview, 29.7.1987). There was also dissatisfaction about the limits placed on participation in pan-European channels, and about the limited possibilities of reacting to new developments, such as specialist narrowcast channels (*ARD besorgt über Staatsvertrags-Musterbegründung*, KuR 16.5.1987, p.14). The ARD stations would also have preferred more flexibility for advertising on public television, especially in respect of advertising after 20.00, which the inter-Land agreement did not allow (see *ARD-Vorsitzender plädiert für flexiblere TV-Werbung*, KuR 16.5.1987, p.15; Hilf, 1987a, p.23).

Although private broadcasters were not entirely satisfied with the final agreement, it was generally agreed that they had been given sufficient security for further development. Some criticism was expressed about the advertising concessions awarded to the public stations (see Jürgen Doetz, Managing Director of SAT 1 cit. in Leudts, 1987a, p.3). According to Andreas Schardt, SAT 1's *Justiziar*, the *Länder* had attempted to treat public and private broadcasters in an equal fashion, but this approach was fundamentally flawed:

Eine rechtliche Gleichbehandlung von privatem und öffentlich-rechtlichem Rundfunk führt zumindest für die nächsten 5, 6, 7 Jahre wo der private Rundfunk noch in der Entwicklung ist, zu einer wirtschaftlichen Ungleichbehandlung. Das muß jeder sehen, der sich in der Medienpolitik auskennt. (Interview, 5.8.1987)

However, the decision to fund the supervisory bodies of private broadcasting from the licence fee freed private broadcasters from this financial burden. As this money was also to be used to improve terrestrial reception of private broadcasting, the economic survival of

private channels, in terms of larger audiences, and consequently more advertising revenue, was given a significant boost.

Hans-Wolfgang Heßler, the media expert of the Evangelical church, saw the inter-Land agreement as a compromise between political and business interests which ignored the interests of different groupings within society (Heßler, 1987, p.22). This feeling is echoed by Kammann, who realises, however, that this was the price to be paid for compromise: "Die besiegelte generelle Abkehr vom Kulturgut Rundfunk ist der tatsächliche hohe Preis für das hohe Gut der Einheitlichkeit" (Kammann, 1987a, p.5; see also Lafontaine, 1987, p.4). Predictably, as a representative of the church, Heßler criticised the agreement for allowing advertising on Sundays and religious holidays (1987, p.23). However, he admitted that public broadcasting had received a better deal than might have been expected (1987, p.22).

The inter-Land agreement of 1987 did not complete the restructuring of broadcasting in West Germany. It merely set the stage for further developments, by providing a framework for future reference. In March 1987, SAT 1 was awarded a TV-Sat transponder in accordance with the stipulations of the *Südschiene*, to which Bavaria, the Rhineland-Palatinate and Baden-Württemberg were signatories (see *SAT 1 erhält Kanal auf Rundfunksatellit*, FR 23.3.1987). However, the promise of a DBS transponder was of less significance than the terrestrial frequencies which went with the award. As expected, a further TV-Sat transponder was awarded to SAT 1's rival, RTL Plus, under the conditions of the *Nordschiene*, to which Hamburg, Lower

Saxony, Schleswig-Holstein, and West Berlin belonged (see *RTL plus erhält "Nordkanal" des TV-SAT*, FR 6.4.1987). This too was linked to the more interesting prospect of terrestrial frequencies.

### 3.9 Further clarity from the Constitutional Court

The Constitutional Court delivered a further broadcasting judgement on 24th March 1987 and publicised it on 4th June 1987 in response to a case brought by SWF and SDR against the Baden-Württemberg *Land* media law, which had come into force on 1st January 1986 (*Beschluß des Ersten Senats des Bundesverfassungsgerichts über die Verfassungsbeschwerden des SDR und des SWF gegen das Landesmediengesetz Baden-Württemberg von 24.März 1987*, in FKD, 12.6.1987, pp.1-40; see also *Landesmediengesetz Baden-Württemberg*, 16.12.1985, in Bauer, Detjen, Müller-Römer, 17.1.2). The central issue concerned the law's attempt to exclude public stations from certain areas of broadcasting (local broadcasting, specialist narrowcast channels, and pay services), in order to improve the chances of success for private broadcasting. However, the Court was also expected to make further pronouncements on the dual system of broadcasting.

The Court gave further definition to the concept of basic provision by public broadcasting. It stated categorically that *Grundversorgung* did not imply "eine Mindestversorgung" allowing the removal of certain types of programming from public broadcasting (p.19). Nor did *Grundversorgung* imply a division of obligations, in the sense that certain programmes were part of basic provision, allowing the remainder to be

provided solely by private broadcasting channels (p.19). According to the Court, basic provision consisted of three elements: a technology (at present terrestrial distribution, which allowed reception by all), programme content, and safeguards to ensure the portrayal of plurality of opinion in broadcasting (p.19). This put an end to the argument that public broadcasting was tied to terrestrial distribution. Furthermore, by declaring public service broadcasting's exclusion from certain technological forms of distribution to be unconstitutional (p.37), the Court declared that these might eventually be included in *Grundversorgung*, if they replaced traditional broadcasting (p.39).

The Court declared those clauses of the Baden-Württemberg law unconstitutional which forbade public broadcasters from initiating or expanding sub-regional and local broadcasting services, or, in fact, any other areas of broadcasting (p.18pp, p.34pp, p.36). The Court's reasons for declaring these clauses unconstitutional were not connected to the principle of *Grundversorgung*, as the Court admitted that these services were not part of public broadcasting's obligation of basic provision (p.19, p.37). They were declared unconstitutional because they conflicted with the principle of free forming of opinion as guaranteed in Article 5 of of the Basic Law (p.23).

According to the Court, the introduction of private broadcasting within a dual system of broadcasting only made sense if the diversity of programming was improved overall, in spite of the deficiencies of private broadcasting (p.23). For this to take place there had to be competition between different channels (p.23). To introduce private

broadcasting as a means of encouraging programme competition, and yet to forbid public broadcasting from certain areas of activity, was therefore a contradiction, and a barrier to the formation of opinion within society. The Court ruled that public broadcasting must be given equal access to all areas of broadcasting, even to those which were not considered to be part of *Grundversorgung* (p.23). More importantly, the legislator had to ensure that public broadcasting had sufficient funds to provide programming in competition with private broadcasting (p.23). In confirming public broadcasting's right to equal participation in all areas of broadcasting the Court rejected Baden-Württemberg's argument about the need to protect the economic existence of private broadcasting, for in its view: "Markтчancen können eine Frage wirtschaftlicher, nicht aber der Meinungsfreiheit sein" (p.25). Even beyond the basic provision of services by public service broadcasting, the state, in this case Baden-Württemberg, could not pass legislation which kept certain areas of broadcasting activity exclusively for private channels.

The Court added that as local and regional programmes were not part of *Grundversorgung*, public broadcasting had no priority of access over commercial channels, but it had to be given the *same* opportunity as private broadcasting in this area (p.28). Equal access was sufficiently secured in these areas of broadcasting, if several private channels competed with one public channel (p.28). However, in the event of a shortage of technical capacity, public channels wishing to undertake regional or local programming would have to split their

existing terrestrial frequencies, provided that this did not affect the provision of other services which were part of *Grundversorgung* (p.29).

Although the Court was prepared to uphold public broadcasting's access to all areas of broadcasting, it declared that the law's ban on advertising in the local and sub-regional services of SDR and SWF to be constitutional, as was the requirement that public broadcasters would need approval by law to institute subscription or pay-per-view services (p.29pp, p.31). The Court justified the advertising ban in the interests of protecting the economic survival of private broadcasters, but stipulated that the funding of public channels had to be secured by some other way, otherwise public broadcasting would be indirectly prevented from engaging in local and regional broadcasting, and this would have been incompatible with constitutional demands (p.29).

According to the Court, the restrictions on pay and pay-per-view services referred only to methods of funding, and did not prevent public stations from offering additional specialist narrowcast channels (p.31). Such programmes were not part of *Grundversorgung*, because they were only aimed at a narrow audience, and their content was of such a specific nature, that they could not contribute fully to the formation of public opinion (p.32). However, as was the case with regional or local broadcasting, public broadcasters had to have the same opportunities as private broadcasters to provide narrowcast channels, especially if these contained programmes, in particular cultural and educational programmes, which private channels were

unlikely to transmit (p.32). As with regional and local broadcasting, the legislator would have to find some other means of funding public service broadcasting's activities in this area, if it was not to be indirectly denied access to the provision of specialist narrowcast channels (p.33).

### 3.9.1 Evaluations and reactions

In retrospect, the Constitutional Court's ruling of March 1987 was more significant than its predecessor of November 1986. Where the fourth judgement had opened up new opportunities for private broadcasting, the Court's fifth acted as a brake, reinforcing the principles of freedom of expression and information, the need to secure the comprehensive formation of opinion within society, and broadcasting independence.

Some of the confusion about the previous definition of *Grundversorgung* was removed (see Jakob, 1987, p.3). It was now quite clear that *Grundversorgung* did not imply a minimum of services, and that public service broadcasting's existing terrestrial services could not be taken away, and reserved for private channels. *Grundversorgung* was not a static concept, but a dynamic term which allowed for adaptation to changes in technology and programme content. Its basic premise is reception by all, which for the time being means distribution by existing terrestrial frequencies, but does not exclude satellite distribution at a later date.

More importantly, the Court's ruling removed the notion of protected areas of activity for private broadcasting. In doing so it reinforced the principle of the freedom of broadcasting from the state, as the legislator cannot forbid public service broadcasting from any field of broadcasting. New standards had been set for the autonomy of public broadcasting. Theoretically there is nothing to stop public broadcasting from embarking on additional regional and local services and narrowcast services in competition to private broadcasting, even though these are not part of basic provision or *Grundversorgung*. The Court's fourth broadcasting judgement in November 1986 appeared at times to be guided by the need to protect the economic existence of private broadcasting. The fifth judgement reinstated balance by reiterating the need to secure competition between different channels, rather than economic competition.

In terms of broadcasting finance the public stations would appear to have won a significant victory. Although regional, local, and narrowcast services are not part of basic provision, the legislator is obliged to secure other sources of funding, if advertising, pay, or pay-per-view funding are prohibited. In theory the public stations therefore have an important weapon in their fight to gain adequate funding, because in setting the licence fee, the *Länder* can no longer restrict increases on the grounds that the public stations are providing services which go beyond the obligation of *Grundversorgung*. Of course, ARD and ZDF will still have to take the public's willingness to pay for further licence fee increases into account (see Bullinger, 1987, p.7). Moreover, even in giving a value to *Grundversorgung*, the



position of ARD and ZDF is by no means secure. As Hans Bausch, SDR *Intendant*, pointed out to me:

Wer liegt nun fest, wieviel Geld man für die Grundversorgung haben muß oder nicht. Wo steht geschrieben, ich brauche mein eigenes Symphonieorchester, das mich DM20 million im Jahr kostet. Ist das Grundversorgung oder nicht. . . Ich würde mich nicht darauf verlassen, daß irgendjemand definiert, was Grundversorgung im Hinblick auf die finanziellen Auswirkungen bedeutet, und das, muß man realistisch sehen, was politisch durchsetzbar ist. (Interview 29.7.1987)

The judgement had given public broadcasting a more secure basis of existence, notwithstanding the fact that further developments may force the Court to alter its assumptions further in the future (see Bullinger, 1987, p.6). In any case, Willibald Hilf, *Intendant* of SWF, pointed out in 1979 that broadcasters would be unwise to be lulled into complacency by any of the Court's rulings: "Der öffentlich-rechtliche Rundfunk kann sich nicht einfach auf den Lorbeeren der Urteile des Bundesverfassungsgerichts ausruhen, er muß seine Position immer wieder aktiv zu legitimieren suchen" (cit. in Fischer, 1979, p.424). This view is shared by Hans Bausch, who in his interview with me indicated that he was always mindful of the changes in attitude which could occur simply from changes in the composition of the Court (Interview, 29.7.1987).

The judgement constituted a setback for private broadcasting, especially in the area of local and regional broadcasting (see Jürgen Doetz, Managing Director of SAT 1 cit. in *Reaktionen auf Karlsruhe: Private enttäuscht, SDR/SWF zufrieden*, KuR 6.6.1987, p.8). It was feared that public broadcasting would extend its services to such a

degree that they would need more funding, thus requiring an extension to advertising, which would affect the further existence of private broadcasting (KuR 6.6.1987, p.8). These fears were underlined to me by Andreas Schardt, *Justiziar* at SAT 1:

Nur die Gefahr, daß ein Wildwuchs entsteht, daß das öffentlich-rechtliche Monopol macht was es will, und immer stärker seine Alimentationsansprüche stellt, die ist nicht zu übersehen. Das ist auch der Hauptkritikpunkt an diesem Urteil, das da möglich eine uferlose Ausweitung möglich ist. (Interview, 5.8.1987)

### 3.10 Review

Ironically, after so much effort to achieve agreement on TV-Sat, the satellite failed to function properly following launch and the project was abandoned in February 1988 (see *Endgültiges "Aus" für TV-Sat 1*, FR 25.2.1988, p.18). The failure of TV-Sat does not appear to have affected the progress of private broadcasting, which has found consolation in the availability of terrestrial frequencies. These offer the prospect of larger audiences at no extra cost to the viewer who does not have to invest in a satellite dish (Andreas Schardt, Interview, 5.8.1987).

For ARD and ZDF, TV-Sat was not the central issue of negotiations on an inter-Land agreement. Their main concern was to achieve security for their existing services and the chance of moving into new areas of activity. In this respect, the Constitutional Court judgement of March 1987 combined with the inter-Land agreement was far more beneficial to them than the judgement of November 1986. As the suppliers of *Grundversorgung* the future of ARD and ZDF's traditional

activities in television and radio is guaranteed. They even have a claim to institute new services such as sub-regional radio and narrowcast services which are not part of *Grundversorgung*. However, the future of all their activities remains subject to the uncertainties of funding. It is true that the *Länder* are obliged to ensure adequate sources of funding in law, but there is no guarantee that these will be forthcoming because of the party political differences inherent in the *Länder* process of policy-making and because of the difficulties in giving a financial value to the services which ARD and ZDF provide.

What the events leading to the signing of the inter-*Land* agreement amply demonstrated, was the dependence of ARD and ZDF on a fragile system of *Länder* policy-making. The squabbles surrounding these events and the time it took to resolve all the issues involved placed the public service broadcasters in an awkward position over which they had little influence. A route out of this labyrinth was only brought about by the intervention of the Federal Constitutional Court.

### Notes

1. Texts of the new broadcasting laws allowing private broadcasting can be found in *Die Neue Medien* (Bauer, Detjen, Müller Römer) or *Media Perspektiven*. By January 1988 the following laws had been passed or were under consideration. Most of these have since been amended to take account of the inter-*Land* agreement on the reorganisation of broadcasting:

- **Baden-Württemberg** - Landesmediengesetz Baden-Württemberg (LMedienG), 16.12.1985 (in Bauer, Detjen, Müller Römer, 17.1.2)
- **Bavaria** - Gesetz über die Erprobung und Entwicklung neuer Rundfunkangebote und andere Mediendienste in Bayern (Medienerprobungs- und -entwicklungsgesetz), 22.11.1984 (in MPD I/1985, pp.1-10)
- **Berlin** - Kabelpilot- und Versuchsgesetz für drahtlosen Rundfunk im Land Berlin, 27.7.1984 ((in Bauer, Detjen, Müller Römer 18.2.2)

- **Bremen** - Gesetz über die vorläufige Weiterverbreitung von Rundfunkprogrammen in Kabelanlagen, 11.7.1985 (in Bauer, Detjen, Müller Römer 17.4.2)
- **Hamburg** - Hamburgisches Landesmediengesetz (HmbMedienG), 3.12.1985, (in Bauer, Detjen, Müller Römer 17.5.2)
- **Hesse** - Entwurf eines Gesetzes über den privaten Rundfunk in Hessen Stand 25.11.1987 (in KuR 6.2.1988)
- **Lower Saxony** - Niedersächsisches Landesrundfunkgesetz, 16.3.1987 (in FKD 27.1987, pp.10-20)
- **North Rhine-Westphalia** - Rundfunkgesetz für das Land Nordrhein-Westfalen, 11.1.1988 (in MPD II/1988, pp.137-155)
- **Rheinland-Pfalz** - Landesrundfunkgesetz, 24.6.1986 (in KuR 30.6.1986, pp.15-20)
- **Saarland** - Rundfunkgesetz für das Saarland, 28.11.1984, pp.16-31 (in MPD I/1985, pp.16-31.
- **Schleswig-Holstein** - Rundfunkgesetz für das Land Schleswig-Holstein, 27.11.1984 (in MPD I/1985, pp.32-41).

## CHAPTER FOUR

### LIVING WITH A DUAL SYSTEM

The Constitutional Court's rulings in November 1986 and March 1987 gave public broadcasting clear obligations with regard to the provision of a full range of programme output, incorporating information, education, entertainment, and especially cultural programming. In this respect nothing had changed, because public broadcasting has always been obliged to provide balanced and comprehensive programming.

References to public broadcasting's responsibility for *Grundversorgung* constituted recognition both of the deficiencies of commercial broadcasting and of the limited extent to which competition could contribute to diversity of opinion and a broad range of programming. More importantly, the Court had rejected the notion of public broadcasting as a "Nischen-Rundfunk", to which many supporters of public broadcasting had objected (see Hoffmann-Riem, 1984, p.48). Realisation of this concept would have involved public broadcasting concentrating on information and minority programmes, leaving more populist programming to private broadcasters. However, the public broadcasters still remain subject to greater demands on the type of programmes they broadcast than their private competitors, who do not have to pay so much attention to minority programmes, information, and culture.

In theory the traditional role of public broadcasting has been reinforced by the rulings, but in practice the public broadcasters must still face the challenge of private competition. In the long-term private broadcasting channels will almost certainly undermine the position of ARD and ZDF as the dominant forces in West German broadcasting (see Stolte, 1984, p.26). Regardless of Constitutional rulings about public service broadcasting's role in a dual system, it is the audience who will decide which system best serves its needs. The way in which public broadcasting responds to the commercial challenge will show the extent of its commitment to *Grundversorgung*, and its ability to offer something substantially different from its commercial rivals and yet still manage to appeal to the majority of the audience with populist programming.

Changes in the programme policy of the public stations are already visible. In order to examine the type and extent of these changes, the separate components of the terrestrial TV output of the ARD stations and ZDF have been examined. Attention has been focused on the terrestrial public channels as these represent both the overwhelming bulk of public service output, and the strongest bulwark against commercial competition at a national level. Public service activities in satellite, cable, and radio have been dealt with separately in chapter five on the expansion of public service broadcasting. A quantitative analysis of the programme output of ZDF and the ARD network was undertaken for a two week period in each year from 1982 to 1987 to establish whether there had been any substantial quantitative changes in programme output in recent years (see 4.8).

#### 4.1 Indications for the future. Inroads by private channels

Competition in the form of privately-owned satellite channels arrived at the beginning of 1984, but remains an unknown quantity because the majority of West German households are still dependent on the terrestrial services of ARD and ZDF. ARD and ZDF currently enjoy the advantages of technological, financial, and human resources. However, these advantages are likely to diminish as private broadcasting becomes more established, drawing viewers and advertising revenue away from the public stations (see Schwaderlapp, 1984, p.159; Schardt, 1984, p.917; Berg, 1985, p.10; Konrad, 1985, p.150; Stolte, 1985, p.164).

The threat of this happening on a rapid scale has been delayed due to the slow spread of cable television, on which private satellite channels like SAT 1 and RTL Plus are dependent for reception. By the end of 1987, 8.9 million households were passed by cable, approximately 34.4% of all West German television households. Of these, 3.2 million homes, or 12.5% of all homes were actually connected, signifying a take-up rate of 36% (*Ende 1987 mehr als drei Millionen Kabelhaushalte*, FR 10.2.1988). However, the increasing availability of local terrestrial frequencies in urban centres like Munich, Hamburg, West Berlin, and the Main-Rhine area around Frankfurt, is gradually solving the problem of reception, and may in fact supercede cable as the chief means of receiving SAT 1 and RTL Plus. Ironically then, it appears as if the old media of distribution hold the key to profitability for private broadcasting, particularly as

terrestrial distribution removes the necessity for the public to invest in a cable connection. In West Berlin, for instance, 800,000 households can receive private television off-air (Kabel & Satellit 27.7.1987, p.3).

Nationally, SAT 1 and RTL Plus pose the greatest threat to the superiority of public television, although they have recently been joined by Pro Sieben, formally Eureka TV, and Tele 5, formally KMP musicbox. None of the new private channels have yet reached the profit zone, but they are likely to weather problems of profitability and low audiences, because of substantial backing from the largest media and publishing concerns in the country. In 1985 SAT 1 spent DM250 million and earned only DM7.5 million in advertising revenue; RTL plus spent DM60 million against DM18 million in revenues (see Cable & Satellite Europe 2/1986, pp.19-21). By 1987 both channels were expected to earn DM50m each in advertising revenues with expenditure running at DM150m and DM120m for SAT 1 and RTL Plus respectively (see *Krieg der Wellen*, Wirtshaftswoche 14.8.1987, p.62). In achieving their long-term aims private broadcasters will undoubtedly be helped by a laxer regulatory regime than their public service rivals, which allows them to concentrate on cheap, imported programmes rather than on expensive domestic production and minority programming.

SAT 1 has six shareholders, having shed four of its original members in 1987 (see Jakob, 1986, p.3). Its principal shareholders are: the Programmgesellschaft für Kabel- und Satellitenrundfunk (PKS,



40%), the Aktuell Presse-Fernsehen (APF, 15%), the Axel Springer-Verlag (15%), and the Holtzbrinck-Gruppe (15%) (*SAT 1: Neue Organisation, verändertes Programm*, FK 5.12.1986, p.5). Yet one of the most important participants in SAT 1 does not appear in this list. Leo Kirch, West Germany's premier film and television distributor, holds a 51% share in PKS through his Taurus-Film GmbH & Co KG (49%), and through his lawyer Joachim Theye (2%) (*Kirch dominiert bei SAT 1*, MP 6/1988, p.391). Kirch also has a 26% stake in the Axel Springer-Verlag, in turn a 35% shareholder in APF, a consortium of 145 newspaper publishers, responsible for producing SAT 1's news and current affairs output (see *Allianz Kirch/Springer: Der Weg ist offen*, FR 15.7.1987; NMM 30.3.1988, p.12; NMM 27.4.1988, p.4). Kirch's activities are not only confined to SAT 1 for he also owns the Teleclub pay movie service, and his son Thomas, holds a 49% share in Pro Sieben. As West Germany's dominant distributor Kirch also provides SAT 1 with 60% of its programmes (see A. Williams, 1988, p.33).

RTL Plus, SAT 1's main rival, has five principal shareholders: Compagnie Luxembourgeoise de Télédiffusion (CTL), the Luxembourg-based television and radio concern (46.1%), the Ufa Film- und Fernseh GmbH (38.9%), the newspaper publishing concern Westdeutsche Allgemeine Zeitung (WAZ, 10%), the magazine publisher Burda GmbH (2%), and the Frankfurter Allgemeine Zeitung (FAZ, 1%) (see *Verleger-TV: Neues Spiel*, Wirtschaftswoche 14.8.1987, p.62). The last two used to be members of the SAT 1 consortium, before differences forced them to seek their fortunes elsewhere (Jakob, 1987, p.3). Ufa is owned by the largest

media concern in West Germany, the Bertelsmann AG (50%) and the publishing group, Gruner & Jahr (50%), itself a 74.9% subsidiary of Bertelsmann (see Williams, 1988, p.34). Bertelsmann also has a minority interest in CLT, because of its 14.29% share of Fratel Luxembourg, which in turn has a 28% share in CLT (see Williams, 1988, p.34).

SAT 1, RTL Plus, Tele 5 and Pro Sieben are all generalist entertainment channels, concentrating on a mix of popular fiction and light entertainment, most of which is imported. Very few programmes are produced in-house (see Lenz, 1987, pp.6-7). Acquired programmes account for approximately three quarters of SAT 1's transmissions and for over half of RTL Plus transmissions (see Krüger, 1987, p.557). By comparison purchased programmes account for only about 20% of output each on the ARD network and on ZDF (see Krüger, 1987, p.557).

Differences in the programming philosophies of public and private stations were shown in a study undertaken in February 1987 (Krüger, 1987, pp.549pp). At peak time (7pm-11pm) fiction (feature films, series) and light entertainment accounted for over 70% of all SAT 1 and RTL Plus transmissions (p.556). At SAT 1 the emphasis is clearly placed on feature films (49%) and series (21%) (p.556). At RTL Plus fiction constituted 57% of output (films 42% and series 15%), with a further 13% devoted to light entertainment (p.556). As expected, fiction and entertainment also accounted for significant proportions of peak-time transmissions on the public channels (ARD 60%; ZDF 48%), but this was still less than the private channels. Moreover, ARD and

ZDF appeared to be less reliant on feature films (ARD 8%; ZDF 11%), devoting more time to plays (ARD 18%; ZDF 12%), a category which was totally absent on the private channels (p.556). The amount of time devoted to series on the public channels was about the same as on RTL Plus and SAT 1 (ARD 16%; ZDF 10%) (p.556). ARD and ZDF also devoted significant proportions of time to light entertainment (15% and 11% respectively), matched only by RTL Plus's contribution of 13% compared to a 1.5% level of light entertainment on SAT 1 (p.556).

As RTL Plus and SAT 1 devote a large chunk of their schedules to fiction and entertainment, the proportion of time devoted to information (SAT 1 27%; RTL Plus 16%) was less than either ARD (36%) or ZDF (46%) (Krüger, 1987, p.556). There were also qualitative differences in the type of information offered. Whereas SAT 1 and RTL Plus concentrated on news (18% and 12% respectively), the information programmes of ARD and ZDF were much more broad-based, incorporating news (16% and 17%), current affairs (16% and 14%), and cultural information (3% and 9%) (p.556).

Differences in programming philosophies can also be shown by comparing peak time schedules, in this case those of ZDF and SAT 1 (see Fig. 4.1). SAT 1's schedule is fairly rigid, and based on a stripping system where the same type of programmes, mainly series and feature films, are broadcast at the same time each day. These are interspersed by short news bulletins. Information programmes are relegated to the late margins. By contrast, a typical ZDF schedule is both more varied and less rigid, incorporating information and

cultural programmes at peak time, programme categories, which are almost absent in SAT 1's peak time schedule. ZDF's schedule only becomes more akin to SAT 1 at weekends, a time usually devoted to more populist output. However, here too, there is a difference, because a substantial part of the evening on ZDF is devoted to sport.

Fig. 4.1

ZDF SCHEDULE 3rd-9th OCTOBER 1987

	19.00	20.00	21.00	22.00	23.00	24.00
Sat	N * Info *	Film	*N*	Sp	* LE	
Sun	N *Info*	LE	* Series *	Series *N*	LE	*
Mon	N *	Film	*I* I *	N * Info *	Info *	
Tues	N *	Info *	Film	*I* N *	Play	* Series
Wed	N *	LE	* Info	*Series* N	*Info* Info	* Film
Thur	N *	LE	* Info *	N * Info *	Sp	* Film
Fri	N *	Info *	Info *	LE * N *	Info *	Sp *

SAT 1 SCHEDULE 3rd-9th OCTOBER 1987

	19.00	20.00	21.00	22.00	23.00	24.00
Sat	S*N* Series	*N*	Film	* Series	*N *	Film
Sun	S*LE*N*	Series*N*	Film	* Series	*N *	Series
Mon	S*LE*N*	Series*N*	Series *N*	Film	*N *	Info
Tues	S*LE*N*	Series*N*	Series *N*	Film	*N *	Info
Wed	S*LE*N*	Series*N*	Series *N*	Film	*N *	Info
Thur	S*LE*N*	Series*N*	Series *N*	Film	*N *	Info
Fri	LE	*N* Series*N*	Series *N*	Film	*N *	Film

Key: N/News, I/Info/Information, Sp/Sport, LE/Light Entertainment, S/Series (Source - Hörzu, 25.9.1987).

Public broadcasters, not surprisingly, have generally been dismissive about the programmes of their private rivals. Manfred Buchwald, *Chefredakteur* at HR, writes: "Es ist ja höchst bezeichnend, daß über die Programme kommerzieller Veranstalter niemand spricht. Ihnen fehlt jede dialog-fördernde Qualität" (Buchwald, 1987a, p.6). Referring to commercial rivals Hans Bausch, SDR *Intendant*, has said: "Es fehlt an Phantasie und es fehlt an Erfahrung. . .An Geld fehlt es nicht. Es fehlt an Geld, wenn ich verdienen will" (Interview, 29.7.1987).

Yet, there are strong indications that private broadcasters want to shift some of their emphasis away from imported series and films in favour of domestically produced programmes, once it becomes economically viable to do so. They are already beginning to invest more time and money into domestically produced entertainment and drama, primarily from independent production companies. According to Andreas Schardt, *Justiziar* at SAT 1, this is a necessity, because: "Eigenproduktion die Identität des Senders viel stärker prägt als Sendungen von Serien und alten Spielfilmen" (Interview, 5.8.1988). However, private broadcasting's dependence on advertising revenue and large audiences, a fact acknowledged by the Constitutional Court, means that minority programmes, especially at peak time, are unlikely ever to be broadcast on a large scale (see Lahnstein, 1987, p.3). As Alois Schardt, *ZDF Programmdirektor*, points out: "Der öffentlich-rechtliche Rundfunk will gefallen; das Privatfernsehen muß gefallen, weil es um die Amortisation hoher Investitionen geht" (Schardt, 1984, p.917).

The extent to which private television has made inroads into the audience figures of the ARD network and ZDF is revealed in the viewing behaviour of cabled households in 1987 (see Darschin/Frank, 1988, pp.214pp). These findings also give some indication of future trends once private television becomes more widely available. Nationally, where cable is only available to 12% of all TV households, the public broadcasters are still holding their ground. In cabled households the story is dramatically different. Here the ARD network's 41% national share of the audience drops to 29%, and ZDF's 41% share falls to 26% (Darschin/Frank, 1988, p.224). The ARD third channels in sum maintain an 11% share of the cable audience, with Eins Plus and 3SAT, making little impact, with shares of 1% and 3% respectively (p.224).

The losses sustained by the ARD network and ZDF in cabled households, have clearly benefited SAT 1 and RTL Plus, with SAT 1 making a better impression than its commercial rival. SAT 1 accounted for 15% of all viewing in cabled households in 1987 compared to the 10% share of RTL Plus (Darschin/Frank, 1988, p.224). Figures for the first quarter of 1988 show that SAT 1 has increased this share still further to 21.5%, following programme reforms which placed more emphasis on entertainment (see *SAT 1 holt auf in der Zuschauergunst*, FR 21.4.1988, p.26). ZDF's share then dropped to 22.8% and the ARD network share fell to 26%. RTL Plus could only maintain a 9.2% share of the cable audience (p.26).

It is of course important not only to establish that ARD and ZDF are losing viewers to SAT 1 and RTL Plus, but also to note which

programmes are losing viewers. The most popular programmes on ARD and ZDF have lost viewers, but are still the most widely viewed programmes in cabled homes. The programmes which have lost most are those devoted to information and culture (Darschin/Frank, 1988, pp.224pp). This gives credence to the view that, given a choice between information and entertainment, viewers will tend to skirt around serious programmes (see Stolte, 1985, p.167).

For instance, nationally the early evening news bulletins of ARD and ZDF enjoy a 27% and 23% share respectively. In cabled homes this share drops to 21% and 18% (Darschin/Frank, 1988, p.225). The later and longer news bulletins fare even worse. Nationally these reach 16% (ARD) and 18% (ZDF) of all TV households. In cabled homes the ARD late news drops to 10%, with ZDF decreasing to 11%, a loss of approximately one third (p.225). This drop in audience share for news is not compensated by SAT 1 and RTL Plus, whose news programmes enjoy only a 4% to 6% share of the cable audience. The decline in viewers for news programmes is echoed by a loss of viewers for other ARD and ZDF information programmes, which have lost between 30% and 40% of their share of the audience in cabled homes, with some programmes even losing half their audience (Darschin/Frank, 1988, p.226). These losses are worrying for public broadcasters, and the situation is likely to become more acute following greater availability of private channels via terrestrial frequencies. However, ARD and ZDF cannot abandon this type of output in favour of more populist programming, because *Grundversorgung* obliges them to keep information and culture as part of a well-balanced schedule.

#### 4.2 Commercialisation or public service - reactions to private competition

ARD and ZDF have been anticipating private competition for some time, and have altered their programme strategies accordingly. Private channels, like SAT 1 and RTL Plus, are already seen as fully fledged competitors, although they are not yet fully established as powerful rivals to the public service system (see Schwarzkopf, 1985, p.62). This stance is confirmed by Hans Bausch, SDR *Intendant*: "Die ARD und ZDF versuchen jetzt schon Plätze zu besetzen, damit die Privaten gar keine große Chancen haben, und sie (ARD and ZDF) versuchen natürlich auch die Gewohnheiten der Zuschauer zu prägen" (Interview, 29.7.1987).

However, while acknowledging that changes are taking place, public broadcasters have been careful to point out that there have been no substantial shifts of emphasis in the amount of transmission time devoted to entertainment, education, and information (see Schwarzkopf, 1985, p.62; Bolesch/Schardt, 1986, p.78; Schwarzkopf, 1987, p.4). Answering fears expressed about shifts in emphasis, Alois Schardt, ZDF *Programmdirektor*, told me:

Es gibt bei ARD und ZDF keine wesentlichen Veränderungen des Programmangebotes im Hinblick auf das Verhältnis von Prozentsatzzahlen von Unterhaltung und Information und Sport. . . Das ist im Prinzip das Gleiche noch. (Interview, 11.8.1987)

Similar views were expressed to me by Hans Bausch, SDR *Intendant*, but he added that nothing will be given away to private channels:

Sie (ARD and ZDF, J.P.) werden sich nicht grundlegend ändern, aber sie werden natürlich auf die Herausforderungen der Privaten



reagieren. . .wenn die Privaten um 19 Uhr etwas machen, werden wir um 19 Uhr was dagegen setzen. (Interview, 29.7.1987)

The public broadcasters argue that any changes in programme policy relate to shifts of emphasis within individual programme categories, not to the amount of time devoted to information, entertainment, and education (Bausch, Interview, 29.7.1987; Schardt, Interview, 11.8.1987). This strategy is prudent given the obligations of *Grundversorgung*. Yet in meeting the commercial challenge, the public broadcasters walk a tightrope (see Konrad, 1985, p.150). On the one hand they must not be seen to neglect traditional public service concerns, which mark them out as the distinctive national system of broadcasting. They must maintain both the quality of their programmes and their universal appeal by broadcasting something of interest to all. Any attempt to simulate their commercial rivals by concentrating purely on mass entertainment would signify a loss of identity and legitimacy. It has to be remembered that the Constitutional Court justified the licence fee on the grounds that public broadcasters should transmit programmes which are substantially different in nature to private channels. Ratings will undoubtedly play a larger role in public broadcasting's future, but they must not become the sole criterion of success.

On the other hand, the public broadcasters cannot afford to stick rigidly to past traditions and successes, which might render them less competitive, because any drastic reductions in viewing figures would also result in questions about the future of the licence fee. The

dilemma facing public broadcasting is neatly summed up by Dietrich Schwarzkopf, *Programmdirektor* of the ARD network, when he writes:

Wir dürfen nicht kommerzieller sein als die Kommerziellen, auch nicht so kommerziell wie die Kommerziellen, aber wir müssen auf eine mit ihnen nicht verwechselbare Weise so attraktiv sein wie sie. (1984, p.920)

For Schwarzkopf, a solution to this dilemma lies in the application of a programme policy which is both both flexible and adaptable to future developments (1985, p.62; 1987, p.3).

In spite of reassurances from the public broadcasters about their continued commitment to public service principles, concern has been voiced about commercialisation in public broadcasting (see Hoffmann-Riem, 1984, pp.38-40; Stock, 1986, p.5). Matthias Greffrath, an editor at SFB radio, writes:

Wenn der öffentlich-rechtliche Rundfunk mit dem siegt, wovon er uns bewahren soll, mit einem schwachen Sinnsbrei aus alten Movies und entertainenden News - dann ist letztlich egal, wer siegt, mit "gedankenloser Massenabspeisung". (1986, p.14)

Politicians, too, have been moved to criticise what they see as a downward trend in public broadcasting. Edmund Stoiber (CSU), head of the Bavarian state chancellory, has noticed a stronger emphasis on entertainment at the expense of culture, information and education, which, in his opinion, constitutes not only a threat to private broadcasting, but an affront to the licence fee-paying public (cit. in Schwarzkopf, 1985, p.62). Dietrich Schwarzkopf, ARD *Programmdirektor*, counters this view by pointing out its inconsistency with earlier arguments put forward by the CDU/CSU, which stated that private competition would stimulate public broadcasting, forcing it to respond to public demands for more entertainment (1985, p.62; see also *Medien*

von Morgen. Medienpolitische Grundsätze der CDU/CSU, MP 10a/1984, p.845).

The academic Wolfgang Hoffmann-Riem detects a gradual tendency towards commercialisation in public broadcasting, but puts this in context by referring to the greater extent of commercialisation in private broadcasting (1984, p.38). Commercialism is not yet the sole determining factor in public television precisely because its aims are substantially different to those of private channels. Public broadcasting systems exist to make programmes, not earn profits from the sale of advertising space.

Schwarzkopf, *Programmdirektor* of the ARD network, sees this criticism of public broadcasting in terms of a "thematischer Schwerpunkt" (1987, p.3). In his view, changes in thematic emphasis are determined by many factors, but also by fashion, "eine Art Mode" (p.3). He points out that ARD and ZDF used to be attacked for being "elitär, arrogant, publikumsunfreundlich. . . verknöchert, verkalkt, unbeweglich, völlig unfähig, den Interessen - und nicht zuletzt den legitimen Unterhaltungsinteressen - des Publikums gerecht zu werden" (Schwarzkopf, 1987, p.3; see also Barsig, 1981, pp.27-28). Now fashion has changed to assert exactly the opposite, namely, "Verflachung, gezielte Niveauminderung, Trivialisierung, Popularitäts-hascherei, Verdrängung der Kultur" (Schwarzkopf, 1987, p.3).

Schwarzkopf categorises the criticism of ARD and ZDF according to different groups with different motives (1987, p.3). First, there are

the concerned supporters of public service broadcasting, who wish to maintain the high quality of existing programmes. Second, there are the station employees, who want to secure their own positions. Third, there are those within the stations who hanker after old times, and would like to see the past partially restored, by narrowing programme range at the expense of entertainment. Finally, the private stations accuse public broadcasting of commercialisation, because they hope that this will strengthen their bargaining power with the political parties (1987, p.3).

The public broadcasters are bound to attract criticism in their attempts to shape up to private competition. This criticism is inevitable, intentional, and sometimes justified. ARD and ZDF know that they have advantages over their private competitors, and it would be unrealistic to expect them not to use these advantages while they still can. The existing situation is summed up by Hans Bausch, SDR *Intendant*, who, in rebutting accusations of commercialisation, said to me:

Das ist auch keine Anpassung. Das ist einfach eine Kalkulation, wie verhalte ich mich, wenn ich einen Konkurrenten bekomme. Sie sind ein Einzelkind in der Familie. Die Eltern erfüllen Ihnen jeden Wunsch. Nun kriegen sie ein Brüderchen. . . das will auch. So wie in der Familie, ist es bei uns auch so. (Interview, 29.7.1987)

#### 4.3 The search for identity - components of public service profile

Conscious of the need to retain public support in a competitive environment, many public broadcasters have spoken of the need to maintain, refine, and distinguish the profile or identity of ARD and

ZDF as the national instruments of broadcasting (see Schardt, 1984; Schwarzkopf, 1984; Stolte, 1984, p.29). To some extent this would appear to be an exercise in public relations rather than a change in programming philosophy. Manfred Buchwald, *Chefredakteur* at HR, argues that channel profile begins with station identification (1987a, p.5). He refers to the pioneer role of ZDF in this field and to ZDF's "unverwechselbares ZDF-Gesicht" (p.5). ARD has followed ZDF by paying more attention to continuity announcements and the use of graphics for its new emblem 'EINS' (1987, p.5). Andreas Schardt, *Justiziar* at SAT 1, sees these changes as a reaction to new forms of presentation on private television, and told me:

Vom Erscheinungsbild her wird man sicher sagen können, daß die Rundfunkanstalten, allen voran das ZDF, sich bemühen in einer Weise, die vorher jedenfalls nicht so zu verzeichnen war, ihr Programm ausgiebig zu präsentieren. . . Man versucht also jetzt, das Programm kompakter und lockerer zu präsentieren, als es bisher der Fall war, dieser Verkündungscharakter, dieser steife, Kathedralen-Aspekt. Da behaupte ich mal einfach, daß sie das bei den Privaten abgekuckt haben. (Interview, 5.8.1987)

Apart from the optical illusions of station identification, priority has been given to the development of programme content. However, if channel profile is to be emphasised, what are its principal components? In the past, profile was gauged by reference to past achievements, by ideas about the ideal nature of public service, and by competition between the ARD network and ZDF. Now another criterion of comparison has to be added - private broadcasting. However, Alois Schardt and Dietrich Schwarzkopf argue that any comparison between the programmes of private and public channels can only be made for certain programme categories, most obviously news and entertainment

(Schardt 1984, p.914; Schwarzkopf 1984, p.919). In their view, even the comparison of entertainment output has to be qualified, because private channels like SAT 1 and RTL Plus transmit mainly foreign feature films and series broadcast on public channels many years before (see Schardt 1984, p.914; Schwarzkopf 1984, p.919; Bausch, Interview, 29.7.1987; Schardt, Interview, 11.8.1987). Any comparison of public and private broadcasting would therefore seem to depend to a large extent on public broadcasting's continued attention to those programmes which are missing or marginal on private channels.

Given the deficiencies of private broadcasting, public broadcasting's integrative role, its ability to cater for both majorities and minorities, is regarded as a prime component in the maintenance of channel profile (Schardt 1984, p.915; Schardt, 1984a, p.55; Stolte 1984a, p.294). For Alois Schardt, ZDF's *Programmdirektor*, any comparison with private channels should include an examination of the whole programme palette in all its breadth and diversity, for it is individual programme categories which determine profile (1984, pp.914-915; see also Schwarzkopf, 1984, p.921; Schneider, 1985, p.247). In this sense the public broadcasters have an advantage over their commercial rivals, because they are less dependent on advertising income. This means that they can be more flexible and patient in terms of experimentation, and attention to the needs of minorities, which are not always profitable target audiences for the private sector (see Lehr, 1985, pp.235-236). However, the idea of public service broadcasting concentrating on those programmes which private channels are unable or unwilling to provide, is rejected by top public

broadcasters (see Schardt, 1984, p.916; Schwarzkopf, 1984, p.921).

Alois Schardt, ZDF *Programmdirektor* has said:

Ich will also nicht bloß das machen, was die anderen nicht machen, sondern ich muß auch das machen, was die anderen jetzt hauptsächlich machen. . Wir haben ein "Lebensmittelgeschäft", in dem alles vorhanden ist, auch Käse. Nebenan wird ein neues Geschäft eröffnet, und zwar ein Käseladen, das sind die Privaten. Deswegen muß ich nicht aus meinem Laden den Käse herausnehmen. (cit. in Bolesch/Schardt, 1986, p.86)

Domestic production is seen as a further element in maintaining public broadcasting's identity and integrative role in society (Schwarzkopf, 1985, p.62). Commitment to domestic production is shown by statistics on the sources of transmitted programmes on the ARD network and ZDF. In-house productions, those programmes produced solely by the public stations, account for almost half of all first transmissions (see Figure 4.2). Domestic production is further enhanced by programmes commissioned from independent West German producers, and co-productions undertaken either with European broadcasters or with other partners.

The dominance of domestic production in public broadcasting is regarded as vital, if the public are to recognise their own culture, and the authenticity of programmes in relation to their own lives and personal experiences (see Schardt, 1984, p.915). The nature of public broadcasting is seen to be determined by domestic production, particularly in those areas not catered for by private channels, which include plays, documentaries, foreign news coverage, educational, and children's programmes (see Schwarzkopf, 1984, p.921; Stolte, 1984, p.27; Schwarzkopf, 1987, p.4). The public broadcasters are also keen to

all transmissions. This figure includes first transmissions (18%) and repeats (10.5%) (ZDF Jahrbuch, 1987, p.144). On the ARD network, first showings of purchased programmes account for 14.5% of all transmissions, and are likely to account for at least half of repeated programmes, giving a total of about 25% purchased programme transmissions (see ARD Jahrbuch, 1988, p.353). What these figures fail to reveal is the split between European content and American content, because high levels of the latter are undoubtedly a greater worry to concerned observers of public service broadcasting than the former. The fact that commercial channels are heavily reliant on cheap foreign films and series, usually of American origin, places the public stations under pressure to limit their reliance on foreign programming and maintain significant amounts of German-language programming.

Some of the hostility shown towards imported programmes like series arises from fears that these set international standards which threaten the survival of national culture (see Schardt, 1984a, p.51; Schuchardt, 1985, p.22; Wiesand, 1985, p.199). Hoffmann-Riem argues that the commercial criteria which determine these productions taint the non-commercial character of public service broadcasting (Hoffmann-Riem, 1984, p.39). He adds that commercialisation and reliance on cheap foreign programmes could be encouraged if the public stations are not sufficiently funded, or lack the creative potential to invest in domestic production (Hoffmann-Riem, 1984, p.39).

ARD *Programmdirektor*, Schwarzkopf, rejects quotas as a means of combating imports and of maintaining levels of German production. He



points out that the dominance of foreign programmes in some genres has acted as a stimulus to similar West German productions, and he fears that quotas for individual programme categories could affect the flexibility of public broadcasting (1984, p.921). Alois Schardt, ZDF *Programmdirektor*, argues for recognition of the cultural value of foreign programmes: "denn wir dürfen uns nicht auf die Wirklichkeit und kulturelle Dimension unseres Lebensbereichs beschränken" (1984a, p.53). Other reasons put forward against quotas include a possible increase in state intervention, the ineffectiveness of quotas in an environment where foreign satellite channels are widely available, and financial and scheduling constraints which force reliance on cheap imports (see Wiesand, 1985, p.197).

Of course, any attempts by the public broadcasting sector to maintain channel profile are also dependent on factors over which they have little influence. Continued innovation in programming is dependent on the award of an adequate licence fee and continued access to advertising income. Efforts to reform may also be hindered if substantial numbers of employees or artists are lost to the commercial sector because of frustration or lower wages (see Schwarzkopf, 1984, p.922). This problem could be partially countered by exclusive contracts for top broadcasters and entertainers (see Schardt, 1984, p.918). A further problem is the use of exclusive contracts for events, in particular sport (see Stolte, 1984a, p.293). Finally, profile is dependent on political consensus about the future existence of public broadcasting. As Klaus Berg, NDR's *Justiziar*, points out:

Ob es zu dieser Profilierung oder zum Wettrennen kommt, liegt weithin an den Rundfunkanstalten selbst, aber auch daran, ob sich

der Gesetzgeber auch in Zukunft zu seiner gestaltenden Kernverantwortung im Rundfunk bekennt. (1985, p.10)

#### 4.4 Entertainment; the decisive factor

Entertainment programmes are one important component in ZDF and ARD's strategy against commercial competition. According to Hans Bausch, SDR *Intendant*, both ARD and ZDF "haben sich auf die Konkurrenz jetzt schon eingestellt und haben ihre Programme ausgeweitet, auch jene Elemente stärker betont als früher, die populär sind" (Interview, 29.7.1987). This strategy is logical given that popular entertainment constitutes the "Lebenselixir" of private broadcasting, and the key meeting point between public and private broadcasting in the battle for viewers (see Schwarzkopf, 1987, p.6).

But what is entertainment? The viewing public may have a completely different idea about what constitutes an entertaining programme to those actually involved in the production process. In practice there is no precise definition, because entertainment covers a multitude of different types of programmes, and many different ideas about what constitutes an entertaining programme (see von Rüden, 1979, p.169). For the purpose of this study, two major categories have been distinguished. In the first instance there are those programmes which follow a dramatic script; series, serials, mini-series, plays, and feature films. In the second instance, there are those programmes grouped under the label of light entertainment; variety shows, game shows, chat shows, and popular music programmes.

promote domestic production because they realise that these programmes are generally more popular than their foreign counterparts. This factor was emphasised to me by Alois Schardt, ZDF's *Programmdirektor*:

Das, was wir selber herstellen, wird in Deutschland höher akzeptiert in der Einschaltquote als das, was wir kaufen, und zwar auch in dem gleichen Genre. . . Wenn ich eine Unterhaltung mache, und ich kaufe sie egal wo, kommt sie nicht so intensiv an, als wenn ich sie selber mache. Aus dieser Erfahrung der letzten Jahre, habe ich die Lehre gezogen, daß wir stärker auf Eigenproduktion setzen sollten, was teurer ist, und daß wir in der Unterhaltung auf Serien setzen. Also ZDF ist in Deutschland der Seriensender. (Interview, 11.8.1987)

Fig. 4.2

SOURCES OF TRANSMITTED PROGRAMMES IN 1987 (%)

	ARD	ZDF
In-house production	45.7	46.4
Co-productions	10.8	1.0
Independent commissions	5.5	11.0
Programme purchases	14.5	18.0
Relays	4.3	4.2
Repeats	21.2	19.4

(Source: ARD Jahrbuch, 1988, p.356; ZDF Jahrbuch, 1987, p.144)

Co-productions, especially with other European public stations, are seen as a solution to the increasing costs of programme production, particularly of high quality drama, and feature films (see Schardt 1984, p.917; Schwaderlapp, 1984, p.163; Maier, 1986, p.49; Ungureit, 1987, p.54; see also Chapter 6). Co-productions are likely to increase at the expense of in-house production, but Heinz Ungureit argues that

resources may then be redistributed to traditional in-house areas such as information (1987, p.61). An example of this type of collaborative effort is the European production cooperative, established in 1985 by seven European public broadcasting organisations: ZDF, ORF (Austria), SRG (Switzerland), RAI (Italy), Antenne 2 (France), TVE (Spain), and Britain's Channel 4. This has a budget of DM157 million over three years, and aims to encourage the production and worldwide distribution of European drama (see Stolte, 1985a, p.31; Ungureit, 1987, p.60). It is also hoped that such agreements will free European broadcasters from dependence on the international, in particular the American market for programming (see Ungureit, 1987, p.60).

The public stations' commitment to domestic production is also vitally important to independent German producers, who are unlikely to find substantial support from private channels for many years (Schwaderlapp, 1984, p.163; Schwarzkopf, 1987, p.4). ZDF has a special role in this respect, as it devotes more of its transmission time to independent productions than ARD (see Fig. 4.2). In 1985 alone, ZDF spent DM200 million on programmes commissioned from 60 independent German producers (Stolte, 1985a, p.30). By 1988, expenditure on independent production at ZDF was budgeted at DM270m for about 35,000 hours of programmes (ZDF, 1988, p.104). ZDF's stronger reliance on independent production is historical. At its inception it had few in-house production facilities, and chronic shortages of funds forced it to look to independent producers, many of whom came from the flagging German film industry. This approach has generally been viewed as a success, summed up by former ZDF *Intendant*, Karl Holzamer:

Aus dieser notgeborenen Haltung wurde dann geradezu eine Tugend, die auch die Pluralität künstlerischer Kräfte auf dem Bildschirm gegenüber der immer als Monopol gekennzeichneten Struktur der Rundfunkanstalten darstellt. (cit. in Fischer, 1979)

Independent producers are involved mainly in drama and light entertainment production, but are also dependent on Studio Hamburg and Bavaria Atelier, West Germany's two major independent production and facilities houses. Studio Hamburg is a wholly owned subsidiary of NDR. WDR and HR have majority stakes in Bavaria Atelier.

Broadcasting's topicality and its ability "dabeizusein" as a live participatory experience is seen as a further element in this profile-building strategy (Schardt 1984, p.916; Schwarzkopf, 1987, p.5). Alois Schardt, ZDF *Programmdirektor*, referring to ZDF policy in this area, told me:

Die Strategie heißt. . .mehr Live-Sendungen. Das heißt, daß ich auch kulturell lieber eine Oper aus der Metro in New York oder aus Covent Garden übernehme, als daß ich eine sehr teuer selbstproduzierte aus der Konserve spiele, was wir früher gemacht haben. (Interview, 11.8.1987)

In spite of statements about public broadcasting's commitment to domestic production, there has been concern about levels of foreign programming on public channels (see Deutscher Kulturrat, 1984, p.793; Wiesand, 1985, p.191pp). Existing legislation on public service broadcasting contains nothing about quotas on levels of foreign and domestic programmes. ARD *Programmdirektor* Schwarzkopf estimates that foreign programmes account for 20% of transmissions on the ARD network (1984, p.921). At ZDF, purchased programmes, which are likely to be mainly foreign serials and feature films, account for 28.5% of

all transmissions. This figure includes first transmissions (18%) and repeats (10.5%) (ZDF Jahrbuch, 1987, p.144). On the ARD network, first showings of purchased programmes account for 14.5% of all transmissions, and are likely to account for at least half of repeated programmes, giving a total of about 25% purchased programme transmissions (see ARD Jahrbuch, 1988, p.353). What these figures fail to reveal is the split between European content and American content, because high levels of the latter are undoubtedly a greater worry to concerned observers of public service broadcasting than the former. The fact that commercial channels are heavily reliant on cheap foreign films and series, usually of American origin, places the public stations under pressure to limit their reliance on foreign programming and maintain significant amounts of German-language programming.

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But what is entertainment? The viewing public may have a completely different idea about what constitutes an entertaining programme to those actually involved in the production process. In practice there is no precise definition, because entertainment covers a multitude of different types of programmes, and many different ideas about what constitutes an entertaining programme (see von Rüden, 1979, p.169). For the purpose of this study, two major categories have been distinguished. In the first instance there are those programmes which follow a dramatic script; series, serials, mini-series, plays, and feature films. In the second instance, there are those programmes grouped under the label of light entertainment; variety shows, game shows, chat shows, and popular music programmes.



The importance of entertainment is recognised by many public broadcasters. Wolfgang Penk, the head of entertainment at ZDF, believes that entertainment programmes are "imageprägend" (1985, p.55). Dietrich Schwarzkopf, ARD *Programmdirektor*, calls entertainment an "unverzichtbarer Bestandteil" of public service broadcasting (1987, p.3).

Given the important role of entertainment in meeting commercial competition, attention will undoubtedly become more focused on ratings. This carries a danger with it, because judging programmes purely on the strength of audience size could inhibit experimentation and force reliance on old trusted formulae. The problem of finding a balance between the need for high ratings, and the need to show something new and innovative is highlighted by Willibald Hilf, *Intendant* of SWF, who states that in a future competitive environment of increased entertainment offerings:

wird die ARD sich in der ungewohnten Lage zwischen Programmauftrag und Konkurrenzdruck auch zu fragen haben, wie differenziert das Kriterium "Publikumserfolg" auszulegen ist. . Wir dürfen den Sehgewohnheiten der Zuschauer nicht hinterherlaufen, wir müssen auch versuchen, sie mit unseren Programmen zu prägen. (1987, p.7)

In recognition of its duty to undertake *Grundversorgung*, public broadcasting has to pursue a double strategy. On the one hand it must pursue popularity and ratings (see Schwarzkopf, 1987, p.4). On the other hand, it must not neglect to cultivate those programmes which its commercial rivals are unable or unwilling to provide. Entertainment programmes cannot therefore be allowed to become the

sole determining factor of public service broadcasting's output (see Dietrich Schwarzkopf, 1987, p.4; see also Braun, 1985, p.67).

Both ARD and ZDF are trying to reform their entertainment output, but are faced with considerable difficulties, even internal opposition. ARD is particularly keen to make changes; ZDF, by contrast, has always been considered the better entertainment channel (see Schwarzkopf, 1987; Schardt, Interview, 11.8.1987). Dietrich Schwarzkopf, ARD *Programmdirektor*, has called entertainment a "gefährdete Gattung", a term more usually applied to serious drama and arts programming (1987, p.6). In his view there are some within the stations who do not consider entertainment to be part of broadcasting's classical function to inform, educate, and entertain (1985, p.62; 1987, p.6). Underlying this wish is the idea that commercial channels are better at satisfying the audience's entertainment needs anyway (see Schwarzkopf, 1987, p.6). He opposes this standpoint, and calls entertainment a legitimate and necessary part of public service broadcasting's obligations which requires continuous strengthening in terms of originality, quality, and public acceptance (1984, p.920; 1987 p.3; see also Hilf, 1987, p.7). He points out that few of ARD's programmes reach 50% of the audience, and would even appear to be questioning the willingness of broadcasters to cater for the needs of the majority, having stated: "Können wir nicht, wollen wir nicht, oder trauen wir uns nicht, gezielte Sendungen mit einer Erfolgchance von über 50% zu produzieren" (1987, p.6). Bernd-Peter Arnold, deputy *Chefredakteur* at HR, also justifies entertainment, referring to its integral role in the provision of *Grundversorgung*:

Wenn man zur Grundversorgung auch die Unterhaltung zählt, dann kann man Unterhaltung im Fernsehen. . nicht als Selbstkommerzialisierung oder vorweggenommene Kommerzialisierung bezeichnen, sondern dann ist das Teil der Grundversorgung. (Interview, 26.8.1987)

Unlike British television, West German public stations have never really had a good international reputation for entertainment. This is partly due to language barriers which militate against the export of German-language programmes in a market dominated by the English language (see *Wenig Chancen für ARD/ZDF auf dem Weltmarkt*, FR 24.4.1988). There are of course notable export exceptions in drama - *Heimat*, *Das Boot*, *Schwarzwaldklinik*. However, some of the blame for the low standing of popular entertainment in West German public television has to be attached to lack of innovation in the past, although more attention is now being focused on popular drama. There are few domestic sitcoms on West German television, and very little stand-up comedy in spite of a strong historical tradition of cabaret. In light entertainment there seems to be a tendency to rely on the same format of lengthy variety and game shows hosted by the same small group of show business personalities (see Schwarzkopf, 1987, p.6). Dietrich Schwarzkopf feels that light entertainment especially, is suffering problems of form, and questions the future of lengthy variety shows lasting 90 minutes or more (1987, p.6).

Part of the reason for the low standing of entertainment programmes in West Germany can be attributed to academic criticism of popular culture, which has affected both broadcasters and public debate. Much of this criticism is based on the theories of the

Frankfurt School, which were very influential in academic circles in the 1960s and early 1970s (see Hofer, 1978, pp.4-6). Horkheimer and Adorno, two of the most influential West German practitioners of cultural criticism, argued that mass-produced commercialised culture was one of the main supports of a monopolistic capitalist system, because of its emphasis on consumerism, short-term gratification, technology, and "classlessness" (see Hofer, 1978, p.4). According to these arguments, culture marketed as a commodity loses its critical potential and so reinforces the power of the existing order (see Horkheimer/Adorno, 1969, p.348; Adorno, 1985, pp.476-483). Others have argued that popular programmes are escapist, stereotypical, ignore the real world, and so reinforce popular prejudice (see Holzer, 1969, p.52; Holzer, 1971).

Siegfried Braun, head of series at ZDF, believes that the absolute assumptions of these views are now encountering opposition with a corresponding rehabilitation of entertainment (1985, p.70). This has resulted in a resurrection of the social and ethical dimension of entertainment, and the presentation of popular family series in particular as a "ruhender Pol" in a changing world:

Sie dienen damit - jenseits aller kulturkritischen Bedenken - der Festigung allgemein anerkannter Werte, der Vergewisserung der Lebenswirklichkeit des Zuschauers und nicht zuletzt der nationalen Identität, wobei einheimische Schauspieler eine besondere Rolle spielen. (Braun, 1985, p.72)

One might also argue that renewed interest in entertainment is more the result of competition from private broadcasters. Wolfgang Penk, the head of entertainment at ZDF, is less optimistic when he argues:

Doch hat Unterhaltung speziell im Fernsehen, wie überhaupt Unterhaltung, in unserem Lande kein Ansehen, zumindest von

intellektuellen Maßstäben aus betrachtet. . .Unterhaltung und Showbusiness gehören bei uns eben nicht zur Kultur. (1985, p.55)

More recently academic debate has been influenced by the American media researcher Neil Postman (1985; 1986, p.10). Postman argues that broadcasting's tendency to trivialise everything it touches, makes censorship unnecessary, because people are gradually losing the ability to think for themselves (1986, p.10). Postman believes that entertainment programmes are not the central issue. More serious, in his view, is television's tendency to treat even serious culture and information according to populist values. In this atmosphere, pictures and images become more important than ideas and debate even for serious political topics (1986, p.10).

Gerd Bauer, from ZDF's entertainment department, traces part of the disdain for entertainment to those involved in production (1985, p.61). According to him, those embarking on a broadcasting career have often been influenced by ideas at university which militate against entertainment (1985, p.61). Even if they are graduates of the two colleges for film and television (the Deutsche Film- und Fernsehakademie, Berlin and the Hochschule für Fernsehen und Film, Munich), they have not followed courses on entertainment. According to Bauer, young broadcasters believe it to be more socially prestigious to concentrate their efforts on serious programmes, which in turn heighten their own prestige rather than on entertainment (1985, p.61).

Those within the stations who support greater attention paid to entertainment appear to be winning the battle, but the essential problem facing public broadcasting still lies in the ability to achieve a balance between the serious and light components of entertainment. Outlining this need for balance Alois Schardt draws an analogy to literature stating that, "Triviales und anspruchvolles Schrifttum sind koexistent" (1985, p.51). This broad concept of entertainment in literature should, in his view, also apply to television entertainment:

Unterhaltung ist nicht nur legitim, sondern der Wunsch danach auch zeitlos. Unterhaltung enthält die ganze Bandbreite vom Trivialen bis zum Anspruchsvollen. (1985, p.51)

A broad concept of entertainment has been missing in West Germany. Light entertainment and popular drama are frequently described as trivial, with serious entertainment (plays, opera, ballet), seemingly extricated from the genre and elevated onto an altogether higher plane. If entertainment were viewed as a whole in both its light and serious aspects, its low standing might become a thing of the past. The pigeon-holing of entertainment is ultimately detrimental to the whole of public broadcasting's output, because it implies that information programmes, documentaries, and cultural offerings are incapable of "entertaining", or of holding the audience's attention.

#### 4.4.1 The growing importance of popular drama

Drama is a standard component in the schedules of both the ARD stations and ZDF. On the ARD network, drama accounts for 19.1% of all transmissions, excluding feature films and detective series, which

account for a further 15.6% of transmissions (ARD Jahrbuch, 1988, p.355). At ZDF, drama and feature films account for 20.2% of all transmissions, with early evening serials and series accounting for an additional 5.7% of transmissions (ZDF Jahrbuch, 1987, p.141).

However, drama is expensive to produce. It is widely acknowledged that it is cheaper to buy this type of programming from abroad, rather than show domestically produced programmes. Furthermore, it has been established that serials (serializations of the same story resulting in a set number of programmes) and series (programmes with the same characters and settings in different stories), whether domestic or foreign, are much more likely to achieve high ratings than one-off plays (Bausch, Interview, 29.7.1987). Consequently, the two major issues dominating the debate about drama on West German public television are the status of domestic drama against foreign imports, and the status of one-off dramas and cultural events against serials or series (see Fechner, 1985, p.7; Janssen, 1986). In particular there are worries that serious cultural events and drama may eventually be relegated to late night spots where they will only be encountered by a very small audience (see Hirsch, 1985, p.90).

Popular drama in the form of serials, series, and mini-series are now a familiar feature on public service television, but this has not always been the case (see Der Spiegel, 30.1.1978, pp.154-6). Some believe that their increasing importance since the late seventies is a reaction to accusations that ARD and ZDF were not transmitting what the public wanted (see Durzak, 1979, p.72). Alternatively, they have

been viewed as an alibi to combat accusations of political bias (see Durzak, 1979, p.72). Regardless of any ideological view, series especially, undoubtedly constitute an important element in the fight against commercial competition because their regularity and popularity attract huge audiences. Schwarzkopf argues that increased emphasis on series is not purely a result of economic considerations or of attempts to achieve high ratings. It has also been brought about by a growing number of producers who want to make series and mini-series (1987, p.8). He adds that the proportion of series as a share of total output has not increased. This is echoed by Alois Schardt, *Programmdirektor* at ZDF, who explained to me:

Wir haben die (series, J.P) überhaupt nicht vermehrt, sondern wir haben unsere Eigenen etwas stärker herausgehoben. Ich nenne das eine höhere Auffälligkeit. . .Es geht nicht darum, das zu vermehren. (Interview, 11.8.1987)

However, Schardt admits that the emphasis on series at ZDF has come at the expense of mini-series and one-off dramas (Interview, 11.8.1987).

Alois Schardt justified ZDF's increased emphasis on series to me as television's equivalent of popular literature:

Die Serien sind zu einem größten Teil Trivialliteratur. . .Ich persönlich bezwinde mich dazu: zu jeder guten Bibliothek gehört auch eine Abteilung Trivialliteratur. Ich kann nicht jeden Abend Kant oder Dickens lesen. (Interview, 11.8.1987)

In his view drama series fulfil an ever present human need for stories which are simple enough to be understood by all (see Schardt, 1984, p.916; 1985, p.52; see also Braun, 1985, p.68; Penk, 1985, p.59). It may of course be difficult to serialize Kant, because his work is pure philosophy. Some might also argue that Dickens originally appeared in



serialized form, and is far from being highbrow because his books still have an enormous readership worldwide, and are frequently televised.

Siegfried Braun, head of series at ZDF, distinguishes two types of the genre. *Königsdramen* like the American series *Dallas* and *Dynasty* explore the secrets of the rich and powerful; West German series tend to revolve around "bürgerliche Miniaturen", the life and experiences of "ordinary" people (1985, p.69). In the battle between foreign imports and domestic productions, West German public broadcasters are keen to point out the benefits of their own productions.

It is claimed that the audience can easily identify with the characters and plots of domestically-produced family series like ZDF's *Diese Drombuschs* and *Ich heirate eine Familie* or ARD's *Lindenstraße* (see Bauer, 1985, p.63; Braun, 1985, p.69; Schwarzkopf, 1985, p.62). It is also argued that domestic series are increasingly more popular with the audience than their American counterparts (Penk, 1985, p.58). This fact has resulted in more emphasis on the production of German series, often in cooperation with independent producers (Schardt, Interview, 11.8.1987). To a certain extent policy appears to have been fashioned by the experience of foreign broadcasters, in particular British television. Dietrich Schwarzkopf, ARD *Programmdirektor*, admits this when he writes: "Wenn es ein Vorbild gibt, dann ist das eher die englische Dauerserie 'Coronation Street', die seit 25 Jahren zweimal in der Woche gesendet wird" (1985, p.62).

In addition to series, emphasis has also been placed on high quality mini-series, often produced by independent producers or in cooperation with others (Schwarzkopf, 1987, p.8). Some of these mini-series, like *Heimat*, *Das Boot*, *Buddenbrooks* and *Väter und Söhne* have achieved great international success (see Schardt, 1984, p.915; Lehr, 1985; Schwarzkopf, 1985, p.62).

Although series are hugely popular with the audience, they have received little positive echo from professional critics. Gerd Bauer, from ZDF's entertainment section, recounts the tale of the first reactions to ZDF's *Schwarzwaldklinik*, a hospital drama which began in October 1985 (1985, p.60). This series is regularly seen by 60% of the viewing audience. According to Bauer, the new series was condemned almost universally at the *Mainzer Tage der Fernsehkritik*, although only one participant had bothered to view the series. In criticising the programme, many were moved to cite Neil Postman's book, *Wir amüsieren uns zu Tode*. Bauer argues that in doing so they failed to understand the substance of Postman's argument, which states that entertainment, which is ideally suited to television, is not a danger to society. The threat of triviality comes from television's attempts to deal with things which are culturally important, in its attempts to present itself as a purveyor of important cultural messages (Bauer, 1985, p.60; see also Fetscher, 1985, pp.13-14; Piper, 1985, p.74). Bauer views the bias of intellectuals against entertainment as a sign of intolerance: "Verdammt wird grundsätzlich, was emotional und spontan ist, was Verständlichkeit und Leichtigkeit besitzt und keinen anderen Zweck als die Unterhaltung äußert" (1985,

p.60). He criticises attempts to add something more to entertainment's primary role of entertaining and argues that:

Unterhaltung sollte man vor allem an ihrer erklärten Absicht messen: zu unterhalten. Man sollte ihr nicht andere Ziele unterstellen und dann deren Nichterreichen einklagen. (1985, p.63)

However, increased emphasis on series has led to concern about the future of the serious one-off drama, and the transmission of live cultural events like opera, ballet, and theatre (see *Klagelieder in Sachen Kultur. Zum Hearing der Westberliner Akademie der Künste über Rundfunkprobleme*, FR 30.10.1985; see *Abgeschoben an die Peripherie des Programms*, FR 23.9.1986). This concern is likely to grow with the knowledge that commercial television is unlikely to provide this type of programming because it is not popular enough to attract audiences and advertising revenue. Too much emphasis on popular programmes could rob television of its ability to contribute to a common cultural identity, and ignores the possibility that today's minorities can easily become tomorrow's majorities. In this sense broadcasting can help to break down barriers, by providing access to certain aspects of culture like classical music, which were previously only accessible to elites (see Schardt, 1984a, p.51, 54).

The problem of achieving a balance between what is regarded as serious drama and popular drama requires attention to scheduling and perhaps a broader definition of culture, but it is not always easy to find this balance between the serious and the popular nor to fill the programming gap between highbrow and lowbrow content. In terms of scheduling, those within ARD and ZDF argue that serious cultural

programmes are more likely to succeed if they are regularly placed within a framework of more popular material (see Schardt, 1984, p.916; Schwaderlapp, 1984, p.161; Stolte, 1984, p.28). On this subject ZDF *Programmdirektor* Schardt writes:

Hier gibt es eine Programmmischung, ein diffiziles Ausbalancieren von Populärem und Anspruchvollem, bei dem ein publikumsfreundlicher Ausgleich nur durch den Imperativ eines Mehrheitsprogramms im Umfeld eines Zielprogramms auch bei Beachtung der Interessen von Minderheiten möglich ist. (Schardt, 1984a, p.51)

In this sense popular programmes are seen as a necessary complement to more serious output, offering the audience an opportunity to become acquainted with subject matter they would not normally encounter. This, according to Schardt is necessary because, "Ohne ein ausgewogenes interessantes Programmumfeld wird Kultur nur noch denen im Fernsehen begegnen, die sich ohnehin dafür interessieren" (1984, p.916).

Dietrich Schwarzkopf, *Programmdirektor* of the ARD network, denies that plays are being threatened by sports coverage, films, and series. Nor does he believe that the themes covered by drama have become tame, that plays have become shorter in duration, or been banished to late night viewing slots (1987, p.8). He points out that the play occupies a fixed weekly slot on the ARD network, and that experimental plays are broadcast on the third television channels or late at night on the first channel (1987, p.8; see also *Engagierte Hilfe für eine "bedrohte Art" - Der WDR entwickelte neues Konzept für das Fernsehspiel in seinem Dritten Programm*, FR 17.3.87). In his view, the play is a necessary component of public broadcasting which is unlikely to be copied by the commercial broadcasters (Schwarzkopf,

1987, p.8). However, as shown later in this chapter, the amount of plays broadcast on ARD has decreased in recent years, so contradicting Schwarzkopf's statements about the healthy state of this type of programming.

At ZDF, experimental and innovatory drama is been encouraged by a special department, *Das Kleine Fernsehspiel*. These plays occupy a regular slot on Wednesday evenings. *Das Kleine Fernsehspiel* provides an opportunity to cooperate with the film industry, universities, foreign broadcasters and third world institutions (Stein, 1985, p.84). According to Eckart Stein, the head of this department, those who produce these plays are aware of their limited appeal to the majority of viewers, but recognise the advantages of television in approaching a wider audience. Stein writes:

Wir sind uns im Kleinen Fernsehspiel darüber im Klaren, daß wir eine ökologische Nische bewirtschaften. . Wir brauchen den Kontakt zu anderen Programmen. Eine Alternative kann nur da fruchtbar sein, wo sie in der Gegenüberstellung, in der Reibung mit dem Normalprogramm in der Mitte lebendig bleibt. (Stein, 1985, p.86)

#### 4.4.2 Light entertainment - the danger of excess

Light entertainment, in the form of shows, quiz programmes, stand-up comedy, and chat shows, is popular with audiences. For instance, a satirical programme like, *Rudis Tagesschau*, on the ARD network, which has been modelled on the BBC's *Not the Nine O'Clock News*, has been known to reach 52% of all television households (*Traumquote für "Rudis Tagesschau"*, FR 24.2.1987).

According to Peter von Rden, variety shows and popular music programmes make up the majority of light entertainment output, but the core is composed of regularly transmitted quiz and game shows (see von Rden, 1979, p.170). On the ARD network light entertainment accounted for 9.9% of all transmissions in 1987 (*ARD Jahrbuch*, 1988, p.355). Unfortunately, it is difficult to draw direct comparisons between levels of light entertainment on ZDF and the ARD network, because the ARD figures do not distinguish between separate categories. Moreover, the ARD figures do not include the regional opt-outs broadcast from 18.00 to 20.00. During this period light entertainment accounts for 51.6% of output (*ARD Jahrbuch*, 1988, p.360). At ZDF the statistics apply to the whole of channel output with the exception of morning transmissions, undertaken jointly with ARD. Here light entertainment accounted for 8% of all transmissions in 1987 (*ZDF Jahrbuch*, 1987, p.141). Unlike the ARD statistics, there is a breakdown of the individual components of light entertainment. Quiz shows and game shows account for approximately 31% of all light entertainment output, followed closely by chat shows and features (although some German chat shows are decidedly weighty in content) with about 29%, and popular music programmes (chart shows, variety shows, and folk music) with about 24%. By contrast, satire and comedy together only accounted for about 9% or 30 hours of all light entertainment output in 1987 (see *ZDF Jahrbuch*, 1987, p.145). A further 7% of light entertainment output was not categorised.

The lack of comedy in West German television, may be an endemic cultural phenomenon. What works in British television is not

necessarily pleasing to West German viewers. Furthermore, these types of programmes cannot be easily imported, because humour does not always travel well. However, the small amount of time devoted to satire may also be due to fear of external criticism. For instance, *Scheibenwischer*, a satirical programme on the ARD network, was dropped by BR for one episode in May 1986 in accordance with the right of every ARD station to drop out of the network (see *Die Gremienvorsitzenden zum "Scheibenwischer"*, FR 9.7.1986). West German television's sensitivity about upsetting those political figures it pillories in its programmes would even appear to have been recognised by other foreign powers. Whereas portrayals of Iran's Ayatollah Khomeini appear to go unnoticed in British programmes like *Spitting Image*, a sketch involving the same religious leader on *Rudis Tagesschau* almost resulted in a breakdown of diplomatic relations. According to ARD *Programmdirektor* Schwarzkopf, satire should have a fixed place in ARD's schedules, but he argues, in my view mistakenly, that the genre has problems in recruiting new talent (1987, p.8).

At ZDF, Herbert Knopp writes that scriptwriters were in the past not very interested in comedy (1985, p.78). He believes that this can partly be explained by the experiences of the National Socialist period, and the fact that Germany has no great tradition of film comedy (1985, p.78). However, he also argues that this is not the only reason for the vacuum since 1945. Nor, in his view, can the lack of home-grown comedy be attributed to a German "Überschuß an Tiefsinn", because foreign comedies are popular (1985, p.78). However, Knopp has sensed a rediscovery of the genre by young scriptwriters,

who are less inhibited by intellectualism, and less arrogant about the limitations of television (1985, p.80).

In addition to traditional variety and music shows, the public stations have also been giving more emphasis to a new type of light entertainment show, incorporating music, and elements of chat show and game shows formats. These are markedly different from their predecessors, and often based on American models. The changes appear to have been led by the two largest ARD stations, WDR and BR.

These new shows have not met with universal acclaim. In a piece entitled "Inferno der guten Laune", *Der Spiegel* criticised this trend (*Der Spiegel*, 25.5.87). It called these types of programmes simplistic, and argued that they were encouraging "ein Drang zu ungenierter Blödsinn und infantilem Spielbetrieb" (p.251). *Der Spiegel* accused the producers of these programmes of turning participants into objects of ridicule, and detected a sense of maliciousness or "Schadenfreude" amongst the new generation of comperes at the expense of contestants. It aimed its attacks at BR and WDR, which are responsible for the bulk of this type of programme, but omitted ZDF, which is generally regarded as the more entertainment-orientated channel. In the same article Frank Elstner, one of ZDF's most eminent comperes, was quoted as saying: "Es ist das Ende guter Unterhaltung, wenn man Kandidaten zu Opfern macht" (*Der Spiegel*, 25.5.1987, p.252).

Dietrich Schwarzkopf, ARD network *Programmdirektor*, is aware of the problems of ridicule in some shows, and has stated:



Wie weit dürfen sich Spiele an der Neigung der Zuschauer zur Schadenfreude orientieren? . . . Schadenfreude angesichts geplanter oder einkalkulierter Mißgeschicke der Teilnehmer darf nicht die maßgebende Freude sein. (1987, p.7)

At ZDF, Wolfgang Penk, the head of entertainment, argues that some changes are necessary, because public taste changes, but he adds that innovation without reference to public taste would constitute an insult to the audience (1985, p.57). Penk regards some of the changes as a good thing (1985, p.58). In particular he points to the integration of journalistic and live elements into light entertainment, which proves that entertainment can be informative as well as entertaining (Penk, 1985, p.59). A prime example of this type of show is *Na Sowas*, a very popular mixture of chat show, game show, and variety show.

#### 4.4.3 Films - a commodity in short supply

Attractive feature films constitute an important element in the programme schedules of most television channels. However, films and other imports, such as mini-series and series, are very likely to be in short supply as more channels chase the same product. The increase in the number of television channels in Europe is already putting inflationary pressure on a limited supply of feature films. Schrape estimates that the cost of acquiring feature films, live shows, sport, and television series is rising at a rate of 10% to 15% per annum (see Schrape, 1987, pp.345-353). With more channels, the inflationary spiral is likely to accelerate, because the producers of new feature films cannot keep up with demand.

In West Germany the problem of securing an adequate supply of feature films is especially acute, because the distribution market for television rights to acquired material is dominated by the Kirch Group, owned by media entrepreneur, Leo Kirch (see NMM 30.3.1988, p.12). Over the years Kirch has secured exclusive rights with most of the American major film companies and now has a library estimated to contain about 15,000 feature films and 50,000 hours of serials, mini-series, and documentaries (NMM 30.3.1988, p.13).

Kirch's near monopoly of feature film distribution has serious implications for ARD and ZDF, because he is not only a supplier of programmes, but also a competitor. Kirch holds a 51% controlling interest in PKS, which in turn holds a 40% share of SAT 1. He also holds a 26% share in the Axel-Springer Verlag, which in turn has a 15% share of SAT 1. Kirch is believed to supply SAT 1 with approximately 60% of its programme needs. Kirch's other TV interests include 100% ownership of the Teleclub pay movie channel, and an indirect interest in Pro Sieben (formally Eureka), where his son, Thomas, has a 49% shareholding. For the moment Kirch appears to be supplying the public broadcasters, and above all ZDF, with the best feature films available, but this situation could change if SAT 1, in particular, becomes more popular than either public channel.

Both ARD and ZDF have made concerted efforts to acquire film rights over a long period in anticipation of future competitive battles with private broadcasters. Andreas Schardt, *Justiziar* at SAT

1 told me why he thought ARD and ZDF had recently purchased so many feature film rights:

Das beruht, meines Erachtens, auf dem Bestreben, das Pulver trocken zu halten, bis die Schlacht losgeht, bis die Reichweiten so sind, daß auch die Filmlizenzanbieter sich überlegen, wem gäbe ich die Rechte. Bis zu diesem Datum werden die Schätze gehortet, und erst dann kommen die guten Sachen aus dem Keller, und dann fängt wirklich der Kampf um die Reichweiten an. Das dauert noch eine Weile, drei, vier Jahre. (Interview, 5.8.1988)

However, only ARD through its purchasing subsidiary Degeto, has made any concerted attempts to acquire films from other sources other than from the Kirch Group. ZDF remains precariously dependent on Kirch.

In February 1984 Degeto secured the exclusive right to select 1350 films from Metro-Goldwyn-Mayer/United Artists' (MGM/UA) archive of 3000 films (see von Sell, 1985, p.29; NMM, 20.7.1988, p.14). The deal also included access to 70 series, to Warner Brother feature films produced before 1948, and to all new films acquired by MGM/UA over the next 15 years (see von Sell, 1985, p.29; NMM, 20.7.1988, p.14). The package, which also included all past and future James Bond films, was secured at a price of \$80 million (von Sell, 1985, p.29). The German language rights were acquired for a period of 15 years and include cable and satellite rights, but not pay television rights (von Sell, 1985, p.29).

Friedrich Wilhelm von Sell, the former chairman of Degeto and *Intendant* of WDR, justified the purchase as a way of guaranteeing the future supply of feature films and of combating inflation (von Sell, 1985, p.29). He argued that the purchase would enable ARD to invest future savings into in-house production (von Sell, 1985, p.30). ARD's

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However, only ARD through its purchasing subsidiary Degeto, has made any concerted attempts to acquire films from other sources other than from the Kirch Group. ZDF remains precariously dependent on Kirch.

In February 1984 Degeto secured the exclusive right to select 1350 films from Metro-Goldwyn-Mayer/United Artists' (MGM/UA) archive of 3000 films (see von Sell, 1985, p.29; NMM, 20.7.1988, p.14). The deal also included access to 70 series, to Warner Brother feature films produced before 1948, and to all new films acquired by MGM/UA over the next 15 years (see von Sell, 1985, p.29; NMM, 20.7.1988, p.14). The package, which also included all past and future James Bond films, was secured at a price of \$80 million (von Sell, 1985, p.29). The German language rights were acquired for a period of 15 years and include cable and satellite rights, but not pay television rights (von Sell, 1985, p.29).

Friedrich Wilhelm von Sell, the former chairman of Degeto and *Intendant* of WDR, justified the purchase as a way of guaranteeing the future supply of feature films and of combating inflation (von Sell, 1985, p.29). He argued that the purchase would enable ARD to invest future savings into in-house production (von Sell, 1985, p.30). ARD's

purchase was the first time that it had dealt directly with an American major, much to the annoyance of Leo Kirch (see NMM, 30.3.1988, p.14). However, the purchase was not agreed unanimously amongst the ARD stations. BR decided not to participate, and continues to buy feature films for its third channel and other material from Kirch (see *Neuer Einkauf bei Kirch*, FR 11.12.85; NMM, 20.7.1988, p.15). Degeto, which is responsible for purchasing feature films and series for the ARD network, has arranged a special exchange deal to allow BR to transmit films from the MGM/UA package (see NMM, 20.7.1988, p.15).

In 1987, ARD's deal with MGM/UA ran into difficulties, following the purchase of MGM/UA by Ted Turner. The American major was now keen to renegotiate the package by reducing the duration of the licence period and restricting access to new releases (see *Nowottny findet MGM/UA-Haltung "mehr als ärgerlich"*, KuR 18.7.1987; *Degeto: Filmpaket der ARD nicht gefährdet*, FR 20.7.1987; NMM 20.7.1988, p.14).

The problem was compounded by an investigation launched by the EC Commission. The Commission was concerned that the exclusivity clause and the duration of the licences contravened European anti-trust legislation at the expense of other broadcasters (see NMM 20.7.1988, p.14). ARD argued that the anti-trust laws deal with trade and not with broadcasting, and pointed out that the Taurus Group has a much stronger hold over feature films than ARD (see *Nowottny findet MGM/UA-Haltung "mehr als ärgerlich"*, KuR 18.7.87; *Schürt die ARD ihr Filmpaket auf*, FR 17.5.88).

The problem may be resolved by ARD's willingness to drop total exclusivity to allow sub-licensing to other television channels, in particular to RTL Plus (see *Schürt die ARD ihr Filmpaket auf?*, FR 17.5.88; NMM 20.7.1988, p.14). RTL Plus has had difficulties in acquiring rights to attractive feature films and series, because of Taurus's close links with SAT 1, and because of the public channels' greater purchasing power (see NMM, 20.7.1988, p.14). BR, which did not participate in the MGM/UA deal, is opposed to any sub-licensing, and has been applying pressure on the other ARD stations to reject it (NMM 20.7.1988, p.14). RTL Plus, however, has one advantage. One of its shareholders, the Ufa Film- und Fernsehgesellschaft holds the transmission rights to the West German football league, and ARD might well agree to a compromise in order to acquire access to further football coverage (see NMM 20.7.1988).

ZDF, however, remains predominantly dependent on Taurus. In February 1984, ZDF acquired rights to 1264 feature films, including 651 American productions and 251 German productions from 12 separate suppliers (see *ZDF erwirbt 1264 internationale und deutsche Spielfilme*, MP 3/84). 750 of these films were purchased from Taurus, and a further 345 were purchased from MGM/UA and Warner Brothers (see MP 3/84; *Neuer Einkauf bei Kirch*, FR 11.12.1985). The German-language rights were secured for a period of 12 to 15 years, and included cable and satellite rights for the vast majority (MP 3/1984). ZDF paid for the purchase by getting approval for a DM258 million supplementary budget from its *Verwaltungsrat* (MP 3/1984).

ZDF claimed that the films had been carefully selected, that European films dominated, and that two-thirds of its feature film requirements were now satisfied until the year 2000 (*Neuer Einkauf bei Kirch*, FR 11.12.85, p.8). However, Taurus still held the rights to a number of blockbusters including *Doctor Zhivago*. The rights to a further 178 feature films were acquired by ZDF from Beta Taurus in December 1985 at a price of DM44 million (see *Neues ZDF-Filmpaket für 44 Millionen DM*, FR 19.12.1985, p.14).

ARD and ZDF's attempts to secure the rights to many feature films has led to a certain amount of criticism, because these purchases do not give credence to the stations' demands for more licence fee revenue (see *Fünfter Bericht der Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten (KEF) - Wesentliche Ergebnisse*, MP 1/1986, p.32; Fechner, 1985, p.7). This tactic is also seen as an attempt to block the advance of private broadcasting (see *Neuer Einkauf bei Kirch*, FR 11.12.85, p.8).

This criticism ignores the fact that both ARD and ZDF are the largest sources of financial support for West Germany's domestic film industry through co-production and a special agreement with the film industry, the *Filmförderungsabkommen* (in *ARD Jahrbuch*, 1986, p.424; see also Blaney, 1987). The last agreement was signed in March 1986 and runs until the end of 1988. Both ARD and ZDF agreed to invest DM24 million into joint productions with the film industry over a two year period. A further DM2 million has been set aside to encourage new talent and experimental films. ARD and ZDF also provide some

financial support for the *Filmförderungsanstalt* (see Friccius, 1986, pp.249-53).

#### 4.5 Sport - a special case

Sport is another key meeting point for public and private broadcasters in the battle for viewers, because popular sporting events like football and tennis attract large audiences, and are comparatively cheap and easy to record. Jürgen Doetz, managing director of SAT 1 has stated that, "Sport ist das Schlachtfeld, um Zuschauer zu gewinnen" (cit. in *Die Zeit* 14.4.87). At the same time, ARD and ZDF are not prepared to let private broadcasters beat them in gaining access to the most important sporting events. Hans Bausch, SDR *Intendant*, underlines this by saying: "Die öffentlich-rechtlichen werden sich bemühen, die wichtigsten Sportereignisse in ihrem Programm zu haben, sie nicht den Privaten zu überlassen" (Interview, 29.7.1987).

The importance of sport is revealed by the substantial proportion of time it occupies in the schedules of both the ARD network and ZDF. In 1987 it accounted for 8.9% of ARD network transmissions, and 8.5% of all ZDF transmissions, although this is often exceeded to accommodate important events like the Olympics or the World Cup (ARD *Jahrbuch*, 1988, p.353; ZDF *Jahrbuch*, 1987, p.141; see also Schwarzkopf, 1987, p.8). According to Dahms, the proportion of sport transmitted by ARD and ZDF has remained fairly constant over the last three years, but Alois Schardt, *ZDF Programmdirektor*, believes that sport is



one of the few programme categories to have undergone expansion in recent years (Schardt, Interview, 11.8.1987; see Dahms, 1988, p.238). Schardt traces increased emphasis on sports coverage, in particular live sport, back to the new competitive environment, when he says:

. . .die Privaten können nur an zwei Stellen einsteigen, weil sie wenig Geld noch haben. . .Die Chance selbst einzusteigen mit eigenen Leistungen, ist der Sport, bei dem sie das Odium der Privaten los werden können, daß sie nur Konserve spielen. . .Und insofern ist der Sport in der Tat Prozentual verändert worden in den Programmen von ARD und ZDF, seit es die Privaten gibt, während die anderen Dinge seitdem nicht oder nur geringfügig geändert sind, prozentual. (Interview, 11.8.1987)

In spite of ARD and ZDF's commitment to sports coverage, recent events have shown that they will increasingly have to pay more for less or non-exclusive coverage. This is especially the case for football, because the West German football federation, the Deutscher Fußballbund (DFB), is keen to exploit private television's interest in broadcasting football (see *Tanz ums Goldene Kalb*, FR 27.7.1985, p.10).

The battle for football rights underwent a major change in 1985, when the DFB appointed a rights agent, Hans R. Beierlein's Montana-Media GmbH, to market the transmission rights to cup and international matches instead of dealing directly with ARD and ZDF (see *ARD/ZDF: mit Beierlein keine Verhandlungen*, FR 20.8.1985, p.8). This was clearly an attempt by the DFB to deprive the traditional broadcasters of their historical dominance in rights acquisition, because the appointment of a rights agent allows greater commercial exploitation of sports rights, by splitting cable and satellite rights for use by private television from terrestrial rights (see *ARD/ZDF:*

*mit Beierlein keine Verhandlungen*, FR 20.8.1985, p.8; *Poker um TV-Rechte geht munter weiter*, FR 4.3.1986, p.8; NMM, 16.3.1988, p.17).

The most serious blow occurred in May 1988, when the DFB accepted an offer of DM135 million from the Ufa Film- und Fernseh GmbH, a subsidiary of the Bertelsmann publishing group, which owns 38.9% of RTL Plus, for a three-year deal for the exclusive television rights to football league matches (see *Fußballbund verkauft Fernsehrechte an UFA*, FR 26.5.1988, pp.1-2; NMM 8.6.1988, p.17). ARD and ZDF had only offered DM67.5 million (FR 26.5.1988). Ufa intends to act as an agent for the other channels. As compensation, the DFB accepted DM25 million from ARD and ZDF for the right to transmit five of the nine weekly league matches for a period of a year (see NMM 26.6.1988). Thereafter ARD and ZDF will have to negotiate directly with Ufa for coverage (see *Schachern um Fußball geht weiter*, FR 27.5.1988).

The loss of exclusive coverage of the football league was a severe blow to the public stations, and a campaign was launched to establish legislative recognition for the constitutional right to provide coverage to a whole range of political, social, and sporting events regardless of whether exclusive rights were held or not (see *Schreiben von ARD und ZDF an die Ministerpräsidenten der Länder zur freien Berichterstattung des Rundfunks über öffentliche Ereignisse*, in MP 9/1988, pp.594-598). This, it was argued, was compatible with the constitutional right of broadcasting freedom, enshrined in the Basic Law, which safeguards broadcasting's right to report (p.594; see also Hilf, 1987, p.6). ARD and ZDF also justified their demands by

referring to the obligation of *Grundversorgung*, of which the provision of comprehensive information is an integral part (p.597).

ARD and ZDF's campaign was aimed not only at exclusive contracts, but also at the sale of rights at high prices, which effectively prevented coverage by other stations (see MP 9/1988, p.594). ARD and ZDF asked for a legal right to transmit short excerpts of between three and four minutes for events of legitimate public interest free of charge (p.598; see also *Rechtsgrundlage für Fußballübertragung*, FR 20.5.1988). It was argued that events of particular interest should be allowed to be transmitted in full in return for an appropriate fee payable to the rights holder (p.598; FR 20.5.1988, p.20).

The campaign found some political support, especially as it was feared that a large section of the population might be deprived of football, if the broadcasters were unable to secure football coverage (see *Rechtsgrundlage für Fußballübertragung*, FR 20.5.1988). Bavaria and Bremen drafted legislation which would clarify the right of ARD and ZDF to cover sports and news events, but the *Land* of Rhineland-Palatinate believed existing legislation to be adequate in this respect (see NMM 17.8.1988, p.16). As is often the case in West German media policy, disunity amongst the *Länder* constituted the major barrier to the public stations' efforts.

ARD and ZDF's attempts to establish a constitutional right to provide news coverage of all events of legitimate public interest suffered a serious blow in August 1988. The case arose because

excerpts from all football league matches had been broadcast on HR's third television channel (see NMM 17.8.1988, p.15). Adjudicating on a case brought by the DFB, a court in Wiesbaden rejected ARD's claim that it was constitutionally entitled to show clips from all football matches, regardless of whether it held the rights or not (see NMM 17.8.1988, p.15).

In July 1988 the Berlin monopolies court delivered a further blow by ruling that ARD and ZDF's exclusive contract for coverage of minority sports contravened anti-trust laws (see NMM 17.8.1988, p.15). This agreement, the so called *Globalvertrag*, had been concluded by ARD/ZDF and the the West German sports federation, the Deutscher Sportbund (DSB) in August 1985 at a cost of DM38 million (see KuR 1.3.1986, p.7; FR 25.7.1985, p.10). The court objected to the size and length of the five-year contract, which gives ARD and ZDF the exclusive right to have first choice of a range of domestic sporting events, with the exception of football, motor racing, ice hockey, golf, and horse racing.

Public service broadcasting's monopoly on football has effectively been broken, but the implications of the battle for exclusive rights goes much further than just sporting events. It concerns the right to report freely about all events of legitimate public interest (see Stolte, 1984a, pp.290-94; Hilf, 1987, p.6). It is unlikely that the public stations will let the setbacks they have suffered in the courts deter them further from trying to establish a constitutional right to report. As far as full coverage of sport is concerned, it is clear

that the public stations will have to reconcile themselves in future to less coverage at a higher price.

#### 4.6 Information - the flagship

The provision of news and current affairs is an important part of public broadcasting's output, and is generally regarded as the flagship of all its broadcasting activities. For this reason information, in a broad sense, accounts for a substantial proportion of both ARD network and ZDF schedules, usually in excess of 40%.

This is in stark contrast to the low priority given to information on the private channels. Krüger estimates that 26.8% and 16.5% respectively of all transmissions on SAT 1 and RTL Plus between 19.00 and 23.00 consist of information programmes (Krüger, 1987, p.556). This compares to 35.9% on the ARD network and 46.1 % on ZDF (1987, p.556). Furthermore, the overwhelming bulk of private television's informational output consists of news (SAT 1, 17.8%; RTL Plus, 11.5%), compared to only 17% on ZDF and 16% on the ARD network (Krüger, 1987, p.56; see also *Nachrichtlich auf Null*, Der Spiegel 25.5.1987, pp.90-92). Whereas ARD and ZDF devote 16% and 14.3% respectively to current affairs, this accounts for only 3.5% of SAT 1 output and 2% of RTL Plus output (p.56).

Information is likely to continue to play an important role in ARD and ZDF schedules, because of the importance attached to it by the Constitutional Court, as part of *Grundversorgung*. The Court ruled:

Im Zeichen der Erweiterung des Rundfunkangebots um privat veranstaltete und europäische Programme kommt es darauf an zu gewährleisten, daß der klassische Auftrag des Rundfunks erfüllt wird, der neben seiner Rolle für die Meinungs- und politische Willensbildung, neben Unterhaltung und über laufende Berichterstattung hinausgehender Information seine kulturelle Verantwortung umfaßt. (*Urteil des Bundesverfassungsgerichts vom 4.11.1986, in FKD 7.11.1986, p.19*)

The lower demands placed by the Court on private broadcasting in respect of information are only acceptable if public broadcasting fully satisfies its classical role of providing a comprehensive and pluralistic range of information. This role has been fully acknowledged by the public broadcasters. The former chairman of ARD, Willibald Hilf, who is also *Intendant* at SWF, writes, referring to the deficits of private broadcasting:

Deshalb werden die Programme der Landesrundfunkanstalten, in denen lokale und regionale Ereignisse in länderbezogene, länderübergreifende und internationale Zusammenhänge eingebunden werden, verstärkt zur Komplementation der Defizite eines internationalisierten oder lokal zersplitterten Kommunikationsmarktes herangezogen werden müssen. (Hilf, 1987, p.5)

Dieter Schwarzkopf, *Programmdirektor* at ARD, believes that information will be play an "eher noch verstärkt vorrangige und vornehmste Aufgabe" than before (1987, p.4).

However, concern has arisen that with a future environment of many competing channels, news and current affairs might lose their central role. Research undertaken in cabled households has already shown that the information programmes of ARD and ZDF have suffered most in the competitive battle with private channels for viewers, because given a choice between information and entertainment, viewers will often skirt around information (see 4.1; Dehm, 1984, p.209; Darschin/Frank, 1987, pp.225-226). In the past, many of these programmes were protected by

a system of complementary scheduling by ARD and ZDF, but the arrival of private television means that these programmes will no longer have a captive audience (see Hall, 1979, p.308). Although the public stations will have to accept smaller audiences for their information output, they cannot afford to ignore this part of their activities, either constitutionally or politically. If private channels continue to give only limited attention to current affairs, it will be up to the public stations to provide depth of analysis and a public platform for debate (see Hilf, 1987, p.5). For without this willingness to stage a dialogue between different sections of society, public culture might be impoverished (see Hilf, 1987, p.5).

According to Dietrich Schwarzkopf, ARD *Programmdirektor*, every evening, with the exception of Saturdays, should include at least one information-based programme in addition to the news (1984, p.920). This complements his belief in the need for greater explanation in current affairs, and a strengthening of broadcasting's advisory role (1987, pp.4-5). For Schwarzkopf, programmes which convey "das Dabeisein, Miterleben oder Nacherleben" are also an important component of information (1987, p.5).

Schwarzkopf's ideas are reminiscent of recent discussions about current affairs output at the BBC. He opposes "zersplitterte, fragmentierte, bruchstückhaftige Information" and feels that more use should be made of background programmes like *Tagesthemen*, a nightly news programme representing a cross between the *9 O' Clock News* on BBC 1 and *Newsnight* on BBC 2 (1987, p.4). He rejects lengthier news

bulletins, and opposes language which impedes access to information, arguing that many West German journalists are too prone to using the specialist vocabulary of politicians and experts, rather than language which can be understood by all (1987, pp.4-5). These views are echoed by Janssen, who writes:

Und Information wird nicht informativer je angeblich unterhaltender man sie aufbereitet, statt sie durch klare Sprache, konturenreiche Darstellungen, aussagekräftige Bilder und ihre gekonnte Montage, durch begründete und in ihren Gründen belegte Meinungen "spannend" darzubieten. (1986, p.1)

Concern about the presentation of news programmes in particular has led to reforms. Both ARD and ZDF now use two presenters for their main evening news, and have adopted a more informal approach to presentation (see Siepman, 1985, p.15; *ZDF intensiviert Auslandsberichte*, FR 27.9.1985, p.20). According to Andreas Schardt, SAT 1's *Justiziar*, these attempts to become "ein bißchen aufgelockerter" in the presentation of news are a direct result of new presentational techniques employed by private television (Interview, 5.8.1987). The changes clearly represent an attempt to give identity to public broadcasting's current affairs output, so that it can be identified clearly amongst the plethora of competing offerings on commercial channels. According to Heiko Engelkes, the number two at *ARD-Aktuell*, ARD news is now more fluent, better visually, and places more emphasis on the day's major stories, live features, sport, and culture (cit. in Siepman, 1985, p.15). However, with obvious reference to the news of SAT 1 and RTL Plus, he denies that ARD will concentrate more on entertaining news and features (cit. in Siepmann, 1985, p.15).



However, changes in presentation are only one aspect of attempts to reform public broadcasting's information output. For many observers of broadcasting, political interference represents a far greater threat to public broadcasting's role as a medium and factor in the formation of public opinion (see Buchwald, 1987, p.9). This threat occurs not only from outside, but also from within; from politicisation within the supervisory bodies of public broadcasting and from the political allegiances of individual journalists and producers (see Schwarzkopf, 1984, p.921; Buchwald, 1987, p.6; Hilf, 1987, p.5). Such fears are not new, and have long been a source of public debate about television (see Barsig, 1980, p.39ff), for politicization is evident in West German broadcasting, and was probably one of the main reasons for the political impetus to introduce private television.

Political bias on West German television has been widely researched, with widely differing results (see Noelle-Neumann, 1976, p.7; *Rundfunkjournalisten als Wahlhelfer*, in MP 1/1977, pp.1-10; Merten, 1985, p.9; Kepplinger, 1985, p.22). Although the evidence put forward to support bias or impartiality varies considerably, it cannot be denied that there is a considerable degree of politicisation within West German broadcasting. Dagobert Lindlau, editor-in-chief at BR, refers to the problems of "Verlautbarungsjournalismus", uncritical reporting of political events and its opposite, "Gesinnungsjournalismus", which he calls a "parteilpolitischen Umweltverschmutzung" (1984, p.10). He further suspects that the political parties try to subordinate the media by encouraging the careers of those who are

sympathetic to their political line; in return they expect some form of political payment (1984, p.10)

Dietrich Schwarzkopf, ARD *Programmdirektor*, rejects the accusation that the current affairs output of ARD or ZDF is too narrow or at worst outright biased. However, he criticises "eine meinungsbedingte Themen- und Sichtverengung" which leads to only one view, and asks whether ARD's regular current affairs magazines, which he calls "Richtungsmagazine", have outlived their day (1987, p.5; see also Köcher, 1986, p.49pp). He also opposes "die gezielte Emotionalisierung von Themen", and calls for stronger attention to research (1987, p.5).

The regular current affairs magazines such as *Panorama* (NDR), *Report Baden-Baden* (SWF), *Report München* (BR), *Monitor* (WDR), and *ZDF-Magazin* have always encouraged party-political criticism, more so than the news, whose less analytical content is generally considered to be less controversial (see Hall, 1979, pp.306pp, p.312; Dietrich, 1987, p.4; Bausch, Interview, 29.7.1987). The controversy has been heightened by attempts to balance the magazines politically, but according to Bausch: "Auseinandersetzungen über das Programm gibt es immer. Wenn man neun Partner hat, die das Gemeinschaftsprogramm machen, wäre es wirklich widernatürlich, wenn die alle immer wieder einig werden" (Interview, 29.7.1987). ARD's magazine slot is filled regularly by programmes made at different ARD stations on a four week cycle. Two are considered to be more biased towards the right of the political spectrum and two to the left (see Hall, 1979, p.311). *ZDF-Magazin* is

generally considered to be more right-wing and a counterweight to NDR's *Panorama* (see Hall, 1979, p.311).

Concern at ARD about the future of its political magazines resulted in an examination by the ARD-*Programmbeirat*, which established bias in the selection of themes and in the presentation of a quarter of all contributions to these programmes (*Bericht des ARD-Programmbeirats vom 24.6.1987*, FKD 3.7.1987, pp.1-7; Bausch, Interview, 29.7.1987). The main problem was seen to be the attempt to mould opinion rather than to inform it (p.6). Others suspect that the most recent attacks on the magazine concept are the result of a wish to reform the magazines to combat falling ratings (see FR, 19.2.1987; Dietrich, 1987, p.3). While some, like *SWF Intendant*, Willibald Hilf, have favoured a central editorial department for ARD's magazines, others, such as SDR's *Intendant*, Hans Bausch, maintain that less damage is done by splitting production into four separate centres (Interview, 29.7.1987). Bausch also believes that a lot of the problems of the magazine programmes are due to "star" presenters like Franz Alt at *Report Baden-Baden* who thrive on adverse publicity, but he denies that the magazines have become fewer in quantity or weaker in quality in recent years (Interview, 29.7.1987).

Manfred Buchwald, editor-in-chief at HR, in spite of criticising party political polarisation within broadcasting which turns it into a "Medium and Faktor politischer Strategien des Machterwerbs und Machterhalts", feels that there could be a positive aspect to the introduction of commercial competition (1987, p.8). He admits that the

political parties are trying to use broadcasting through the broadcasting councils, and that the commercial stations have an advantage, because they are seen as apolitical (1987, p.9). However, in a situation of many competing channels, politicians might ironically need public service broadcasting, because there is little opportunity for them to reach the public on the commercial channels, which are predominantly concerned with transmitting entertainment (Buchwald, 1987a, p.4).

#### 4.7 Tensions between ARD and ZDF

The appearance of commercial broadcasting not only has implications for public service broadcasting as a whole. It also has implications for the competitive relationship existing between ARD and ZDF. For they are competing not only with private channels, but also with each other for audiences and advertising revenue, and there are increasing signs that commercial competition is placing a strain on this relationship.

Competition between ARD and ZDF has been controlled by an obligation to coordinate evening schedules in such a way that the viewer has a chance to choose between different types of programmes (see *ARD/ZDF-Programmschema*, ARD Jahrbuch, 1988, pp.386-7; see Bullinger, 1987, p.19). Coordination has also been used to protect information programmes and news from too much competition from entertainment programmes. This obligation is enshrined in Paragraph 22, Clause 3 of the *ZDF-Staatsvertrag*, which states:

Der Intendant hat durch Zusammenarbeit mit den für das Erste Fernsehprogramm Verantwortlichen darauf hinzuwirken, daß die Fernsehteilnehmer der Bundesrepublik zwischen zwei inhaltlich verschiedenen Programmen wählen können.

This arrangement worked fairly well in the past, but has been subject to increased tension as ARD and ZDF have sought to reform their schedules in anticipation of commercial competition (see Schwarzkopf, 1984, p.921; Hilf, 1987, p.7; *ARD-Schema bleibt fast unverändert*, FR 26.6.1987; *ARD setzt auf Konkurrenzfähigkeit*, FR 7.12.1987). Doubts have even been raised about the value of coordination in its present form, given that programmes of narrower appeal will no longer be protected from the popular competition of an increasing number of television channels (see *Stolte: Koordinierung praktisch unmöglich*, FR 23.6.1986).

Some believe that the present approach towards coordination is encouraging self-commercialisation and the marginalisation of minority programmes, as both public networks attempt to maximise their peak-time audiences (see Buchwald, 1987, p.10). Stammeler argues that ARD and ZDF should cooperate more in their attempts to combat commercial competition, rather than resort to confrontation which could exhaust the resources of both systems (1986, p.5).

The notion of cooperation instead of confrontation has been echoed by those within the stations, who have emphasised the mutual benefit of placing public broadcasting's outstanding in-house productions in the forefront of schedules (see Schardt, 1984, p.917; Schwarzkopf,

The programmes shown by individual ARD stations between 17.30 and 20.00 are a source of controversy, because this is the only time when advertising is allowed on public television. Changes in the type of programmes transmitted during this period, which lead to any increase in audiences, automatically result in protests from ZDF. For the ability of ARD and ZDF to maximise advertising revenue during this period will be crucial, if revenue from the licence fee continues to stagnate, and if advertising revenue is subject to competition from private broadcasting channels.

Traditionally the ARD stations have always broadcast regional programmes during this period. However, the need to maximise advertising revenue, and concern about a drop in audiences, has led to reforms. In order to increase ratings WDR, SWF, SDR, and HR have moved their regional programmes to the third television channels, and replaced them with light entertainment and series (see *Unterhaltung soll Zuschauerschwund stoppen*, FR 2.12.1985; *Auch HR ändert Vorabendprogramm*, FR 3.12.1985). At BR, regional news has been moved forward to accommodate more entertainment between 18.55 and 19.50, and access programmes have been put on BR's third channel (see *BR setzt Serien gegen ZDF-Konkurrenz*, FR 18.11.1985, p.20).

The transferral of regional programming to the third channels has been accompanied by an earlier start for the opt-outs from 18.00 to 17.25 in order to accommodate an increase in popular transmissions. A larger area for advertising gives the ARD stations a better chance of reducing the length of their advertising blocks and of distributing

1984, p.921; *Schardt: ARD und ZDF sollten Gemeinsamkeiten betonen*, NMNL 1.12.1984; Schwarzkopf cit. in *ARD will Kooperation mit ZDF gegenüber privat-TV*, NMNL 12.1.1985; Stolte cit. in NMNL, 9.2.1985, p.11). Alois Schardt, *Programmdirektor* at ZDF, told me:

In einem sind wir uns einig, ARD und ZDF. Wir beide glauben, daß wir die Konkurrenz mit den privaten Anbietern am besten bestehen können, wenn wir mehr Eigenleistungen heraustellen. (Interview, 11.8.1987)

This policy was partially implemented in 1986 when ZDF agreed to swap its evening schedules on Monday and Tuesday evenings so that ARD-produced series on Monday evenings did not have to compete with a feature film on ZDF (see *Koordinierungsgespräche von ARD/ZDF beendet*, FR 10.7.1985, p.10). However, the following year ZDF tried to reverse its concession, arguing that ARD had broken the agreement by transmitting an increasing number of foreign, instead of domestic series, on Monday evenings (see *Nur geringe Änderungen am Fernsehschema*, FR 4.7.1986). ZDF's attempt to revert to its earlier decision was a reaction to the loss in ratings it had incurred from the success of ARD's series (see *Unterhaltungsstrategie auf leisen Sohlen*, FR 24.3.1987).

However, the arguments surrounding the coordination of peak-time schedules are only one aspect of the dispute between ARD and ZDF. Most of the tension between the two has arisen not from the scheduling of peak-time programmes, but from the scheduling of those programmes which are not subject to the coordination agreement. These include the regional opt-outs on the ARD network between 17.30 and 20.00, and the regionally-based ARD third television channels.

them more effectively (see *ARD verlängert ihr Vorabendprogramm*, FR 23.7.1987; *ARD erweitert 1988 ihre Fernsehprogramme*, FR 1.10.1987).

These changes have led to protests from ZDF, which used to have an advantage over the ARD stations during this period, because it is under no obligation to transmit regional programmes and could devote itself entirely to programmes of mass appeal, aimed at attracting large audiences and ultimately advertising revenue. ZDF *Intendant*, Dieter Stolte saw the changes as a "Beeinträchtigung und langfristige Existenzgefährdung" for ZDF, which is much more dependent on advertising revenue than ARD (cit. in FR 19.7.1985, p.16; see also Schwaderlapp, 1984, p.160; Stolte, 1985a, p.32; Konrad, 1985, p.150; Stolte cit. in *Rechtsgutachten soll klären - ZDF ist über Programmpolitik von ARD-Anstalten besorgt*, FR 17.12.1985; Stolte cit. in *Auf dem Weg von der Vielfalt zur Einfalt*, FR 15.1.1988). Advertising accounts for approximately 40% of ZDF revenue as opposed to less than 20% of ARD revenue.

Reforms of some of the regionally-based ARD third television channels have further strained the relationship between ARD and ZDF (see Schwaderlapp, 1984, p.160; Stolte, 1985a, p.32). The changes initiated here are primarily connected with national distribution by satellite, and a transformation of channels traditionally characterised by minority and regional programming, into generic channels comparable to the ARD network and ZDF (see Kosmus, 1985, p.175pp). BR and WDR, the two largest ARD stations, have been the prime instigators of these changes, and their third channels, West III and Bayern 3, are



now distributed nationally into cable systems by satellite (see *Würgegriff des Monopols*, Wirtschaftswoche 24.1.1986, p.30).

The impetus for these initiatives appears to be partly political (see Pitzer, 1986, p.63). In Bavaria, governed by the CSU and therefore further to the right on the political spectrum, the national presence of BR's third channel has widely been regarded as a counterweight to what is seen as the left-wing bias of other ARD stations, in particular WDR (see Pitzer, 1986, p.61, p.63). By comparison the national distribution of WDR, which is based in the SPD-governed *Land* of North Rhine-Westphalia, is seen as a more left-wing corrective to the more conservatively-orientated private channels and to BR (see Pitzer, 1986, p.61).

Attempts to implement the most far-reaching reforms occurred at BR. In 1985 BR put forward a proposal to impose an extra DM6 monthly payment on Bavarian licence-fee payers to pay for satellite distribution and reforms aimed at changing the third channel into a fully-fledged generalist programme service (see *Konkurrenz zu ARD und ZDF aus Bayern?*, FR 22.7.1985; Pitzer, 1986, p.63). The plans were heavily criticised by the Bavarian SPD, which saw an attempt to "telemissionieren" "auf bayerisch" at the expense of the Bavarian licence-fee payer (see FR 29.7.1985, p.18). The plan was eventually rejected because of the high costs of DM200 million a year, but it was agreed that the third channel should be distributed nationally by satellite from 1987 at a cost of DM50 million a year (*Ein böses Erwachen aus den Satelliten-Träumen*, FR 4.10.1985).

ZDF has criticised the transformation of the third channels into generalist services as a distortion of the competitive relationship between ARD and ZDF and as a threat to the structure of public broadcasting (see Schwaderlapp, 1984, p.160; Stolte, 1985a, p.32; *ZDF-Intendant in Sorge über dritte Programme*, FR 19.7.1985, p.16; Pitzer, 1986, p.62). The main concern is that populist programming on the third channels draws attention away from ZDF's output, and therefore makes coordination of the ARD network service and ZDF superfluous. ZDF also resents the scheduling advantages offered by the third channels, because the ARD stations can move minority and regional output to these services, allowing the network to concentrate on popular programming. ZDF, which is confined to one nationally available channel, does not possess these advantages, and is particularly vulnerable during the period when it transmits advertising. Alois Schardt, ZDF *Programmdirektor* told me:

Das ZDF ist gegenüber der ARD eigentlich strenger bei seiner alten Mischung geblieben als die ARD. Das hatte einen Grund. Die ARD kann einen Teil ihres kulturellen Auftrages in die dritten Programme tun. Wir können das nicht, weil wir keine Dritten Programme haben. Insofern sind wir hinsichtlich dieser Frage in einem Nachteil, weil wir nicht den Anteil an Unterhaltungsprogramme erhöhen können. Im Filmsektor kann man deutlich feststellen, daß die ARD viel mehr Filme ausstrahlt als wir. (Interview, 11.8.1987)

Hans Bausch denies that ZDF is disadvantaged, but admits that the third television channels are used as a contrast to the network (Interview, 29.7.1989). For example if an opera is transmitted on the network, a more popular programme might be shown on the third channels (Interview, 29.7.1987). ZDF also fears the financial implications of reforming the third channels which might affect the

division of licence fee revenue between ARD and ZDF (see Stolte cit. in Pitzer, 1986, p.62).

Concern about ARD's activities resulted in ZDF instigating a report to examine whether it was still bound by the coordination agreement (*Rechtsgutachten soll klären - ZDF ist über Programmpolitik von ARD-Anstalten besorgt*, FR 17.12.1985). The report by Professor Martin Bullinger confirmed ZDF's belief that changes in the profile of the third channels were affecting the obligation to coordinate programmes (*"Begrenzte Flexibilität" Martin Bullingers Gutachten zur Koordinationspflicht: Zusammenfassung*, KuR 26.8.1987, pp.18-20; see also *ZDF-Rechtsgutachten: Dritte Programme beeinträchtigen Koordination, Gutachter Martin Bullinger schlägt "Anpassung, Ablösung oder Ergänzung" vor*, KuR 26.8.1987, pp.6-7). To solve the problem Bullinger put forward three solutions. The first proposal involved concentration by the third channels on regional concerns and distribution within a clearly defined regional transmission area. Alternatively, the competitive solution could be reduced by banning advertising on the third channels, and by refusing to include the costs of national distribution by satellite in the next licence fee increase. Lastly, he proposed extending the coordination agreement to the third channels. If this was not possible, the precise obligations of the third channels could be fixed in an inter-Land agreement.

Changes initiated by WDR and BR to their third channels have not found universal approval from the other ARD stations either, because increased emphasis on these services is regarded by some as a threat

to the ARD networked service, in terms of both competition and commitment (see Pitzer, 1986, p.60). Dieter Stammler sums up these concerns when he writes:

Die föderalistische Struktur unseres Rundfunksystems, die in all ihren Stärken und Schwächen in der ARD ihren typischen Ausdruck findet, steht und fällt mit der Bereitschaft zum täglichen Kompromiß zwischen unterschiedlichen Interessen und Anschauungen und zur Solidarität zwischen Starken und Schwachen, deren wichtigste Ausprägung der Finanzausgleich bildet. Wenn einzelne Anstalten, die sich allein stark genug wähnen, aus diesem Verbund - wenn auch nur partiell - ausscheren und Alleingänge unternehmen, setzen sie zentrifugale Kräfte frei, die eine kaum zu kontrollierende Eigendynamik entfalten. (1986, p.4)

At a press conference to mark a meeting of the ARD *Intendanten*, the ARD chairman, Friedrich Wilhelm Räuher, warned that these reforms must not undermine joint obligations to the ARD network (*Ein böses Erwachen aus den Satelliten-Träumen?*, FR 4.10.1985, p.26). This follows from fears that some stations may become less committed in their support of the ARD network once they start investing their financial and human resources in the third channels (see Janssen, 1986, p.2). If the programmes of the ARD network deteriorated as a result, questions might be raised about the future existence of ARD. Large stations like BR and WDR could cope with this eventuality, because they have enough resources to transmit their own television services, but the small ARD stations can only participate in television by cooperating with other stations (*Ein böses Erwachen aus den Satelliten-Träumen?*, FR 4.10.1985).

Stammler argues that attempts to change the third channels into generalist services would require giving them a profile which

distinguishes them from the ARD network. Stammeler distinguishes between two solutions. In the first, the third channels would act as a nationally distributed generalist alternative to the ARD network, and would provide a framework for regional programming. In the second, the third channels would become narrowcast services, acting as a supplement to the ARD network (1986, p.5).

Others, such as Herbert Janssen, saw advertising, introduced to HR's third channel, as a threat to the third channels. In his view advertising could undermine the complementary character of the third channels. According to Janssen this complementary character had to be retained:

Das gilt auch heute noch nicht nur wegen der gefährdeten Balance zwischen ZDF und ARD, die politische Auswirkungen zum Schaden des öffentlich-rechtlichen Rundfunks haben könnte, es gilt auch angesichts des Aufkommens privater Programme bei der gleichzeitigen Möglichkeit, die Dritten Programme bundesweit zu verbreiten. (1986, p.1).

Janssen supported the national distribution of the third channels, but rejected any attempts to change them into imitations of ARD and ZDF, arguing that they should retain their regional and alternative character. In his view, this was also in the interest of ARD generally:

Denn warum sollte die ARD ihrem Gemeinschaftsprogramm selbst Konkurrenz machen und weiter deswegen mit dem ZDF im Clinch liegen, statt für die Zuschauer und den öffentlichen Rundfunk förderliche alternative Programme anzubieten? (1986, p.2)

The *Inter-Land* agreement on the reorganisation of broadcasting, signed by the prime ministers of the *Länder*, might halt any further changes to the third channels (see *Staatsvertrag zur Neuordnung des*

*Rundfunkwesens*, in FK 27.3.1987, pp.18-26). Advertising on the third channels was effectively blocked, although exceptionally HR can continue to pursue this course until 1991, when it will have been granted sufficient licence fee revenue to support its new fourth radio network (p.20). Furthermore, a note attached to the agreement confirms that the costs of national distribution by satellite will not be included in future licence fee increases, and that the regional character of the third channels should be retained.

#### 4.8 Shifts in emphasis

From the previous discussion it is clear that ARD and ZDF are responding vigorously to the challenge of commercial competition. The statements of the broadcasters and the debate about the future direction of public broadcasting continuously assert that there will be no change in the balance between information and entertainment programmes, and that domestic production, both in-house, and commissioned material, will continue to play the dominant role in the output of ARD and ZDF. Information programmes will still occupy the same important position as before, but changes of emphasis are occurring within drama, light entertainment, and sport in the attempt to compete with commercial broadcasters. In drama the trend is away from one-off dramas towards series, and in particular domestic series. Light entertainment and sport are supposed to be increasing in significance.

To test some of these assumptions an analysis was undertaken of ARD network and ZDF schedules over a two week period (1-7 October and 12-21 October) in each year from 1982 to 1987 (see Fig. 4.3 and Fig. 4.4). This time-span was chosen because the period from 1982 to 1987 offered an opportunity to study schedules immediately before the advent of private television. The month of October was chosen, because this is a standard month which does not include major sporting events, festive schedules, or large amounts of repeats, which are characteristic of the summer holiday months. In the case of the ARD network, broadcasts within the transmission area of HR were taken as a typical example for the whole of the ARD network, particularly where they related to the regional opt-out period before 8pm.

Schedules were taken from copies of *Hörzu*, the most comprehensive West German listings magazine available. The period studied was 6pm to 11pm, the peak time period, because this is the time when most viewers are watching, and when the public channels are in most direct competition with private broadcasters. The choice of peak time also allowed better comparison in terms of minutes broadcast, which totalled 4200 minutes for each channel over a two week period.

Six main categories were differentiated: information, fiction, light entertainment, sport, childrens' programmes, and other.

The category of information includes news, current affairs, local news, and documentaries/culture. The sub-category of news refers to national news bulletins only, as distinct from local news, which also

includes local news magazines and features. The sub-category current affairs includes only those programmes which deal with current political, social, and economic affairs, like the business programme *WISO*, and the current affairs magazine *Panorama*. It also includes political discussion programmes and programmes about current international events. The category documentaries/culture covers information programmes dealing with history, society, the arts and religion, as well as various advice programmes.

The category of fiction covers all programmes which follow a dramatic script and is divided into feature films, television plays, series/serials, and recorded cultural events such as theatre plays, operas, and ballet. As fiction is most likely to be imported the sub-categories of feature films and series/serials were sub-divided into countries of origin (German, American, European, Other). As the vast majority of one-off plays are German productions, this was not sub-divided into countries of origin.

The category of light entertainment covers quizzes and shows, satire, chat shows, and popular music programmes. The sub-category quiz and shows includes those programmes with a competitive element, or programmes with a mixture of entertaining features. Popular music programmes include pop, jazz, folk music, and variety shows, where music predominates.

Sport was sub-divided into regular sport, such as sports magazines, and live sport. This was felt to be necessary, because the



transmission of one football match during the peak time period would otherwise substantially alter the proportion of sport transmitted.

The category of children's programmes may be subject to inaccuracies, because these programmes are generally shown during the same period as advertising, and the listings magazine did not give clear indications about when advertising was being transmitted. The "other" category includes continuity announcements, lotteries, and advertising where it could be clearly distinguished.

Looking at the category of information it is clear that the amount transmitted by ARD has decreased substantially over the five-year period (43.6% to 33.4%), compared to a slight increase at ZDF (36% to 39.6%). In ARD's case the amount of information has dropped because of the removal of local news to the third channels, although the amount of time devoted to current affairs has also decreased slightly by (8.5% to 5.6%). At ZDF there appears to have been a slight increase in information output due to more concentration on documentaries and culture, and a slight increase in news output. On ARD the amount of time devoted to news has remained about the same over the five-year period.

The decrease in the amount of time devoted to local information at ARD (removed to the third channels) has quite clearly been compensated for by an increase in the amount of time for fiction (38.7% to 46.2%) and in particular serials/series (21% to 32.6%). The number of feature films on ARD and ZDF appears to have remained

Fig. 4.2

## ARD NETWORK TRANSMISSIONS 1982-1987 (%)

	1982	1983	1984	1985	1986	1987
<u>INFORMATION</u>	<u>43.6</u>	<u>43.7</u>	<u>42.8</u>	<u>42.1</u>	<u>35.4</u>	<u>33.4</u>
News	13.2	13.1	13.0	13.2	13.2	13.2
Current affairs	8.5	7.7	7.3	7.1	5.8	5.6
Local news	13.3	13.3	13.3	13.8	4.8	4.8
Documentaries/ Culture/Other	8.6	9.6	9.2	8.0	11.6	9.8
<u>FICTION</u>	<u>38.7</u>	<u>39.4</u>	<u>32.7</u>	<u>37.1</u>	<u>47.9</u>	<u>46.2</u>
1. <u>Films</u>	5.0	6.4	8.6	12.3	8.1	4.8
-German	----	----	----	4.4	----	----
-American	2.1	3.9	3.6	5.6	----	2.3
-European	2.0	2.5	5.0	2.3	8.1	2.5
-Other	0.9	----	----	----	----	----
2. <u>Plays</u>	12.5	7.7	3.0	4.9	6.6	2.6
3. <u>Series</u>	21.0	21.5	20.8	18.5	32.2	32.6
-German	8.8	11.9	10.7	6.5	16.2	13.1
-American	10.9	3.6	6.9	8.1	8.9	16.2
-European	1.3	6.0	3.2	3.3	7.1	3.3
-Other	----	----	----	0.6	----	----
4. <u>Theatre/ Opera/Ballet</u>	----	3.8	----	1.4	1.0	6.2
<u>ENTERTAINMENT</u>	<u>9.2</u>	<u>8.5</u>	<u>10.7</u>	<u>9.8</u>	<u>6.7</u>	<u>11.1</u>
-Quiz/shows	5.0	3.9	5.7	3.6	2.5	7.9
-Satire	0.7	----	----	0.7	0.7	----
-Talkshows	----	----	2.5	----	----	1.1
-Music	3.5	4.6	2.5	5.5	3.5	2.1
<u>SPORT</u>	<u>6.5</u>	<u>5.8</u>	<u>9.1</u>	<u>5.3</u>	<u>7.8</u>	<u>4.5</u>
-Regular	5.8	5.8	5.8	5.3	4.5	4.5
-Live	0.7	----	3.3	----	3.3	----
<u>CHILDREN</u>	<u>1.5</u>	<u>1.9</u>	<u>4.3</u>	<u>5.0</u>	<u>1.2</u>	<u>3.8</u>
<u>OTHER</u>	<u>0.7</u>	<u>0.7</u>	<u>0.7</u>	<u>0.7</u>	<u>1.0</u>	<u>1.0</u>
	100	100	100	100	100	100.0

Fig. 4.3

## ZDF TRANSMISSIONS 1982-1987 (%)

	1982	1983	1984	1985	1986	1987
<u>INFORMATION</u>	36.0	33.2	36.4	38.4	39.0	39.6
News	12.0	11.9	12.0	12.0	11.7	13.2
Current affairs	6.7	6.7	10.2	8.9	8.9	8.8
Local news	----	----	----	----	----	----
Documentaries/ Culture *	17.3	14.6	14.2	17.5	18.4	17.6
<u>FICTION</u>	45.7	43.7	39.3	38.0	35.2	40.8
1. <u>Films</u>	5.5	16.4	8.1	16.9	5.1	8.7
-German	----	1.2	3.5	2.5	----	4.2
-American	5.0	10.6	4.6	2.7	5.1	----
-European	0.5	4.6	----	9.9	----	4.5
-Other	----	----	----	1.8	----	----
2. <u>Plays</u>	13.8	12.3	9.0	5.2	7.5	6.1
3. <u>Series</u>	21.8	15.0	19.6	15.8	21.3	25.5
-German	10.1	6.9	14.4	7.7	14.4	14.2
-American	11.7	6.0	----	8.1	2.7	6.8
-European	----	----	5.2	----	4.2	4.5
-Other	----	2.1	----	----	----	----
4. <u>Theatre/ Opera/Ballet</u>	4.6	----	2.6	1.3	1.3	0.5
<u>ENTERTAINMENT</u>	10.2	11.8	14.2	11.3	15.8	10.7
-Quiz/shows	5.5	6.1	5.1	5.2	7.3	7.1
-Satire	----	1.1	----	----	----	----
-Talkshows	1.1	----	1.1	----	0.7	----
-Music	3.6	4.6	8.0	6.1	7.8	3.6
<u>SPORT</u>	3.1	4.6	4.3	4.2	3.9	5.2
-regular	3.1	3.5	4.3	4.0	3.9	4.0
-live	----	1.1	----	0.2	----	1.2
<u>CHILDREN</u>	1.9	2.3	2.6	3.0	2.0	----
<u>OTHER</u>	3.1	4.4	3.2	3.9	4.1	3.7
	100	100	100	100	100	100

constant apart from an aberration in 1985. This may have been due to large film purchases in 1984/1985. American feature films predominate in most years, but there are also significant amounts of European feature films. Both channels have decreased their showings of one-off plays (down from 12.5% to 2.6% at ARD and from 13.8% to 6.1% at ZDF), thus confirming statements that the one-off play is no longer so important, because of its inability to maintain audience share. The biggest changes can be observed in the larger amount of time devoted to series and serials. At ZDF (an increase from 21.8% to 25.5%) this appears to have come at the expense of one-off plays, and perhaps to a lesser extent from transmissions of live cultural events such as opera, ballet and the theatre (down from 4.6% to 0.5%). The most striking thing about series and serials on ZDF is the increase in the amount of German content (up from 10.1% to 14.5%), with American content seemingly on the decline (down from 11.7% to 6.8%). At ARD there has also been an increase in series/serials, but although German content has maintained a steady, if not increasing share (up 8.8% to 13.1%), American content has also increased its share particularly in the most recent years (up 10.9% to 16.2%).

In spite of ARD and ZDF's statements about the importance of light entertainment, there appear to have been no significant changes in the amount transmitted, at about 10% of all transmissions. Quizzes, shows and music shows continue to make up the bulk of these type of programmes. Satire and talkshows continue to account for only a very small proportion of transmission time, usually less than one per cent, if they register at all.

Contrary to statements about the increase in the number of sports transmissions, the amount of time devoted to regular sports programmes appears to have remained relatively stable. At ARD, these type of programmes may even have suffered a slight decline.

#### 4.9 Review

ARD and ZDF are undoubtedly reviewing their programme policies with a view to private competition. It may be too early to determine exactly where they are going, as future developments are still being discussed internally. Popular content, especially series are undoubtedly being seen as more important both in terms of scheduling and increased share of total transmission time. Their growing importance is backed up by statistical analysis, but here a distinction has to be made between ZDF and ARD. ZDF is concentrating more effort on domestic series, but ARD, while not neglecting this area, is becoming increasingly reliant on imported series also. Increased attention to series/serials is certainly coming at the expense of one-dramas, both on the ARD network and ZDF, and this is confirmed both by the statements of the broadcasters and by statistical analysis. The debate about feature films may be overvalued, because the amount of time they occupy in the schedules does not correspond to the huge amounts spent on acquiring rights.

Apart from the removal of regional output to the ARD third channels, levels of information seem to be fairly constant on both ARD and ZDF, with the split between news and more analytical content

(documentaries, current affairs) maintained. The public broadcasters' assertions about the continued importance of information therefore rings true, but this may not be the central issue. The most worrying aspect of information output is the hold of the political parties over the stations, and an increasing tendency for viewers to skirt around information if offered the alternative of popular programming on private television.

Light entertainment (shows, quizzes, chat shows, comedy) continues to be a poorly served area in spite of public service broadcasters' assertions to the contrary. This may turn out to be a lost opportunity because the private broadcasters do not cater well for this area either, in spite of the huge popularity of many light entertainment programmes (see Fig. 4.1, p.254).

The disputes surrounding sports transmissions are by no means concluded, and are likely to be extended to other areas besides football. In the event of inflated prices for sports rights, ARD and ZDF may well have to compromise and offer less coverage in the interest of maintaining their other programme obligations.

Whether the route taken by the ARD and ZDF, which seems predominantly to be fashioned by popular taste, is right, has yet to be seen. In concentrating on more populist output, particularly popular drama, they may well keep the attention of the audience, but they also run the risk of losing some of their status as public service institutions. One worrying aspect is the emphasis on populist

drama, which ignores the fact that highbrow drama too, can attract large audiences and offer viewers of all classes a great deal of satisfaction. This gap between overtly populist output and very highbrow content has still to be bridged. The continued high status of information output offers some consolation in this respect.

ARD and ZDF must undoubtedly cater for the needs of their audiences, but they must not give the political parties any reason to attack them as a result of changes in programming policy. This is vitally important, because continued financial support via the licence fee is dependent on the goodwill of politicians who grant it. In spite of Constitutional Court pronouncements about the *Länder's* duty to provide ARD and ZDF with adequate financial support to enable them to carry out *Grundversorgung*, quality programming is notoriously difficult to value, and this gives politicians great scope to limit the activities of the broadcasters. The implications of this are covered in Chapter 6.

## CHAPTER FIVE

### PUBLIC SERVICE EXPANSION - A GUARANTEE FOR FURTHER DEVELOPMENT

In the political battles leading up to the signing of the inter-Land agreement on the reorganisation of broadcasting in March 1987, ARD and ZDF constantly emphasised their need for a guarantee of further development, in addition to a guarantee of existence, if they were not to stagnate and become superfluous in a future environment of many competing broadcasting channels (see *Stuttgarter Erklärung der ARD zur Medienpolitik 30.11.83*, MP 11/1983, p.801; *Erklärung der Gremienvorsitzenden der ARD vom 19.10.1983 zur Position der öffentlich-rechtlichen Rundfunkanstalten in der künftigen Medienlandschaft*, MP 11/1983, p.803; Stolte, 1984a, p.291). This aspect was clearly brought out in a conversation I had with Bernd-Peter Arnold, head of radio regionalisation at HR, who distinguishes between the limits of a guarantee of existence and the greater security offered by a guarantee of further development:

Bestandsgarantie würde Rückschritt bedeuten, denn wenn der öffentlich-rechtliche Rundfunk auf seinen jetzigen Stand eingefroren würde, würde das bedeuten in 10 Jahren, liegt er weit zurück. Man kann ein Rundfunksystem nicht auf dem Stand von jetzt lassen, sondern ein Rundfunksystem muß jeden Tag weiterentwickelt werden, sonst ist es sehr bald tot, oder zumindest so steif und unbeweglich, daß kein Mensch es mehr auf Dauer will. (Interview 26.8.1987)

The disputes surrounding ARD's cultural satellite channel, Eins Plus, which have already been discussed in Chapter 3, revealed the depth of controversy surrounding the extent to which public service



broadcasting should be allowed to embark upon new areas of activity. As a result of complaints by private broadcasters, the CDU/CSU *Länder* tried to block attempts by public broadcasters to become involved in satellite television and sub-regional radio. The Bund Deutscher Zeitungsverleger (BDZV), the newspaper publishers' organisation, many of whose members are involved in private broadcasting, accused the public broadcasters of pursuing "einen offensiven Expansionskurs" and claimed that the public broadcasters were practising "eine vorbeugende Verdrängungsstrategie" against private broadcasting (BDZV, 1985, p.770). Their attacks were aimed at the national distribution by satellite of some of the ARD third channels, and at new satellite services, ZDF's 3SAT and ARD's Eins Plus. It was argued that these activities prevented private channels from reaching sufficiently large audiences to attract advertising revenue, on which they are financially dependent (BDZV, 1985, p.770; see also Harnischfeger, 1986, p.17). These attacks were repeated by the Bundesverband Kabel und Satellit (BKS), which represents the interests of private broadcasters in West Germany, and accused the ARD stations and ZDF of establishing facts without legislative approval (*BKS attackiert öffentlich-rechtlichen "Expansionskurs"*, KuR 22.1.86, p.8).

Any doubts about public broadcasting's right of access to new forms of broadcasting have since been partially resolved by the passage of the inter-*Land* agreement on the reorganisation of broadcasting (*Staatsvertrag zur Neuordnung des Rundfunkwesens*, in KuR 25.4.1987, pp.18-26). The agreement not only guarantees ARD and ZDF access to the new technologies of cable and satellite, but it also

obliges both to provide one culturally-orientated satellite channel each. This constitutes the political seal of approval for Eins Plus and 3SAT. However, additional national public channels will only be allowed on the basis of an inter-Land agreement, and this effectively blocks any further initiatives by ARD and ZDF. Furthermore, in the interest of private channels, neither Eins Plus nor 3SAT are allowed to carry advertising. This means that they will have to be funded from existing licence fee and advertising revenues. The inter-Land agreement states that the funding of Eins Plus and 3SAT will be taken into account when the licence fee is set, but the political machinations of the licence fee procedure, to be discussed in Chapter 6, offer little prospect of sufficient increases to fund all of ARD and ZDF's ambitions for these channels.

The Constitutional Court's fifth broadcasting judgement in March 1987, discussed in Chapter 3, was a further boost to public broadcasting's expansionary policies (in *Beschluß des Ersten Senats des Bundesverfassungsgerichts über die Verfassungsbeschwerden des SDF und des SWF gegen das Landesmediengesetz Baden-Württemberg vom 24. März 1987*, in FKD 12.6.1987, pp.1-40). This had dealt with legislative attempts to exclude ARD and ZDF from certain areas of broadcasting (local broadcasting, specialist narrowcast channels, and pay services), and so improve the chances of private broadcasting. The Court ruled that in the interests of free formulation of opinion, public broadcasting could not be excluded from any areas of broadcasting, even if these were not part of its constitutionally defined role of *Grundversorgung*. *Grundversorgung*, according to the Court, was:

nicht eine Mindestversorgung, auf die der öffentlich-rechtliche Rundfunk beschränkt ist oder ohne Folgen für die an privaten Rundfunk zu stellenden Anforderungen reduziert werden könnte. Ebensowenig handelt es sich um eine Grenzziehung oder Aufgabenteilung zwischen öffentlich-rechtlichem und privatem Rundfunk, etwa in dem Sinne, daß Programme oder Sendungen, die der Grundversorgung zuzurechnen sind, dem öffentlich-rechtlichen, alle übrigen dem privaten Rundfunk vorbehalten sind oder vorbehalten werden könnten. (p.19)

*Grundversorgung*, according to the Court, was determined by three factors; a technology which allowed reception by all - currently terrestrial; programme content and safeguards to ensure the portrayal of plurality of opinion (p.19). Although the Court upheld a ban on advertising in sub-regional radio in the economic interests of private broadcasting, it also stated that the legislator must secure alternative means of funding, so that public broadcasting would not be indirectly excluded from new areas of activity.

The Constitutional Court judgement of March 1987 combined with the inter-Land agreement on the reorganisation of broadcasting clarified the legal status of Eins Plus and 3SAT and offered some scope for new developments in other areas of broadcasting. However, practically there are limits, clearly recognised by the public broadcasters, and focused on the thorny issue of broadcasting finance. Even if the legislator is obliged to secure alternative sources of funding for additional services, there is no guarantee that these will be adequate or even forthcoming, given the political nature of the licence fee procedure. As Hans Bausch, SDR *Intendant*, pointed out to me:

In dem Maße, in dem kein Geld dafür da ist, wird es nicht geschehen. . . Ich sehe keine wesentliche Expansion des öffentlich-rechtlichen Rundfunks in den nächsten Jahren aus finanziellen Gründen. (Interview 29.7.1987)

This view is supported by Alois Schardt, *Programmdirektor* at ZDF, who said to me:

Die Fortentwicklungsgarantie ist in der Form nicht gegeben, sie ist nur, wenn sie so wollen, in der Bestandsgarantie immanent. In dem Rundfunkstaatsvertrag steht drin, daß sich alle zwei Jahre die Ministerpräsidenten vergewissern, ob wir eine Gebührenerhöhung brauchen. Sie haben nicht gesagt, wir werden Ihnen einen geben. (Interview 11.8.1987)

The financial limits of the licence fee are made even more stringent by the freeze on advertising on public channels, and by the constitutionally sanctioned ban on advertising for additional services.

Limits to further expansion are also to be found in the danger of spreading existing resources too thinly. This aspect was taken up by Dieter Stammler, who saw a threat of disintegration from within if public broadcasting continued to expand its activities (Stammler, 1986, pp.3-5). He writes:

Welchen Sinn hat angesichts knapper werdender Ressourcen eine Entwicklungsplanung, die darauf gerichtet ist auf allen neuen Übertragungsmedien möglichst viele Plätze zu besetzen? Wäre es nicht sinnvoller, sich auf weniger wichtige Schwerpunktaufgaben zu konzentrieren, statt die Kräfte zu verzetteln? . . . Wäre es unter diesen Prämissen nicht auch vernünftiger, sich bei der Satellitenplanung auf ein gegenseitig abgestimmtes Programmkonzept zu verständigen, statt in Konkurrenz zueinander weitgehend gleichartige Programmplanungen zu verfolgen? (Stammler, 1986, p.4)

In Stammler's opinion, public broadcasters would have been better advised to examine their own internal structures with a view to the future, instead of pursuing "kurzatmigen Aktivismus" (Stammler, 1986, p.5).

The expansion which has taken place is mainly concentrated on new satellite services; ARD's Eins Plus, and ZDF's 3SAT. These come in

addition to the national distribution by satellite of WDR and BR's regionally-based third television channels. Public service broadcasting's involvement in cable is less significant, but it is still important, because the Dortmund cable pilot project was the only one of four cable experiments to be run by a public broadcasting station, WDR. Although sub-regional radio does not constitute the utilisation of new technologies, the additional radio services offered by many of the ARD stations are an attempt to expand and to open up a new field of broadcasting, and are therefore examined in this light.

These expansionary policies show that in spite of the prospect of falling audiences and financial stringency, ARD and ZDF are not prepared to leave any new areas of activity solely to their commercial competitors. Furthermore, their insistence that they be allowed to embark upon new activities revealed that this was more than just an issue of programme policy. The unity of ARD in the face of strong opposition against Eins Plus and sub-regional radio proved that matters of principle were at stake. These centred on the right of public broadcasting stations, subject to approval from their supervisory bodies, to pursue programme policies independently of state and political interests. The victories in the courts, although not absolute in all respects, gave the public stations a new sense of confidence to pursue their future plans.

## 5.1 Public service broadcasting enters the satellite era

ARD and ZDF examined the possibility of satellite television long before private broadcasting became a reality. Their attention was attracted by an agreement to manufacture direct broadcasting satellites (DBS) signed by the French and West German governments in April 1980 (in Ring, 1981, F II.2). Direct broadcasting satellites allow individual reception with a small dish aerial. Telecommunications satellites, like the ECS satellite used by SAT 1, are dependent on cable for individual reception.

ARD announced plans for a regional channel and a European-orientated channel on the West German DBS satellite, TV-Sat, in March 1981 (see Friedebold/Schmidt, 1984, p.19). ZDF's plans, published in March 1981, were more detailed and put forward a proposal for a European-orientated channel (ZDF, 1981). The emphasis on Europe was in recognition of the cultural and political implications of a technology which transcends national boundaries (ZDF, 1981, p.9, p.19; see also Stolte, cit. in von Hagen, 1984, p.112). ZDF saw satellite television as a way of breaking the confines of a single off-air channel and of accommodating a greater range of programmes (see ZDF, 1981, p.10). However, an additional channel was also seen as a useful competitive tool against future private competitors and ARD, whose scheduling of the third channels has long been a thorn in ZDF's side (see Stolte, 1984, p.29; see also Stolte, 1984a, p.291).

ZDF was quicker at realising its satellite plans than ARD, whose federal structure acts as a brake on fast policy decisions. When an experimental cable project was launched in Ludwigshafen on 1st January 1984, ZDF introduced a new channel, ZDF2, made up of time-shifted material from its existing terrestrial service. This gave it useful experience for future initiatives (see Hall, 1984, pp.13-19). On 1st December the time-shifted service was replaced by 3SAT. 3SAT began as a three-year experiment. It was nationally distributed into cable systems from an ECS satellite transponder, awarded to ZDF by the *Länder* prime ministers on 23rd February 1984 (see *Vorläufiges Ergebnisprotokoll der Besprechung der Ministerpräsidenten der Länder*, MP 2/1984, p.152). However, the new channel was ultimately destined for distribution on TV-Sat.

3SAT is a joint undertaking, involving the Swiss public broadcasting station, SRG, and the Austrian public service broadcaster, ORF. Overall responsibility for the channel is held by ZDF (see Konrad, 1985a, p.875). Not only does this sort of cooperation benefit the cultural similarities of three German-speaking countries, it also helps to keep costs down. Compared to a 1987 programming budget of DM527 million for 4077 hours on ZDF's terrestrial service, programme expenditure for 3SAT only amounted to DM18 million for about 2500 hours in 1987 (ZDF, 1988, p.51). This is divided between production costs of DM4.5 million and expenditure on repeat transmission rights of DM13.5 million (ZDF, 1988, p.57). ORF and SRG supply their 41% share of total transmissions free of charge (ZDF, 1988, p.53). The cost of satellite distribution was budgeted at DM20.3 million in 1987

(ZDF, 1988, p.51). In 1987 3SAT accounted for approximately 5% of ZDF's total budget for programme expenditure of DM768 million (see ZDF, 1988, p.51). 3SAT does not have its own production infrastructure, and relies on existing production departments within ZDF for its original productions (von Hagen, 1984, p.114).

A concept for Eins Plus was first announced by ARD in November 1983 (*Eins Plus - ein deutschsprachiges Kulturprogramm für Europa*, MP 2/1984, pp.152-155). Eins Plus began broadcasting from the Intelsat V telecommunications satellite on 29th March 1986, over a year after 3SAT, although it, too, was intended for eventual distribution by TV-SAT. The channel is governed by an ARD administrative agreement signed by the *Intendanten* on 12th February 1986 (*Verwaltungsabkommen der ARD Landesrundfunkanstalten für das Satellitenprogramm "Eins Plus" vom 3. Dezember, 1985*, ARD Jahrbuch, 1986, p.405). Transmission and presentation takes place at SWF's headquarters in Baden-Baden. Eins Plus is coordinated by the ARD *Ständige Programmkonferenz*, based in Munich (p.405). The individual ARD stations are obliged to contribute the same amounts of programming as they do for the network, and are individually responsible for any costs incurred (p.405). Additionally, the Swiss public broadcaster, SRG, contributes 18 "Swiss" days of programming to Eins Plus each year.

Both Eins Plus and 3SAT are available only in cabled households. These numbered about 3.2 million households at the end of 1987 or 12.3% of all West German TV households (see ZDF, Jahrbuch, 1987, p.210;



ARD, Jahrbuch, 1988, p.133). Cabled households in Austria and Switzerland can also receive Eins Plus and 3SAT.

A discussion of public service broadcasting's involvement in satellite television would be incomplete without brief reference to ARD's participation in the now defunct Europa channel. The concept of Europa fitted in well with ARD's strategy for the promotion of European and cultural content, but ARD's commitment to Eins Plus, and the political controversies surrounding this channel, may have dulled its enthusiasm for Europa (see *Europa-TV Finanzspritze von der EG*, FR 1.11.1986).

*Europa* began transmitting from the ECS 1 telecommunications satellite in October 1985. It was encouraged by the European Broadcasting Union (EBU) and involved the Dutch broadcaster, NOS, the Irish broadcaster, RTE, RAI from Italy, RTP from Portugal, and ARD. The EBU, an organisation representing the interests of national broadcasting stations in Europe, saw Europa as a chance for small nations to participate in satellite broadcasting, instead of being swamped by their larger neighbours (see Schwarzkopf, 1986, p.78). Europa was not an ARD channel like Eins Plus, but a foreign one to which ARD contributed programmes totalling 3½ hours a week, and an annual loan of 7.5 million Swiss francs (Schwarzkopf, 1986, p.80). It was hoped that the channel would eventually become self-supporting from advertising (Schwarzkopf, 1986, p.79). Conscious of the need not to upset politicians at home, ARD insisted that its contributions be uninterrupted by advertising, and it did not share in any advertising

revenue (see Schwarzkopf, 1986, p.79). Europa finally collapsed in November 1986 because of insoluble financial problems and lack of support from those involved (see "*Europa TV*" stellte seinen *Sendebetrieb ein*, FR 1.12.1986).

#### 5.1.1 Alternatives - public broadcasting's policy for satellite channels

The programme strategies adopted for Eins Plus and 3SAT provide a complete contrast, not only to private satellite channels, but also to existing public service channels. The two basic elements of both are summed up by Walter Konrad, the *Koordinator* of 3SAT, who referring to 3SAT states: "Es soll ein Programm mit kulturellem Schwerpunkt und mit internationalen Partnern sein" (Interview 24.8.87).

The choice of cooperative partners for both channels reveals a clear commitment to the German-speaking territories of Europe. However, ARD seems to have drawn the short straw in this respect, because SRG only provided 2.3% of Eins Plus output in 1986 in the form of 18 "Swiss" days a year and the occasional series (see Pitzer, 1987, p.30; see also Schwarzkopf, 1986, p.75). In contrast SRG's contribution to 3SAT totalled 12.9% in 1987 compared to only 11% in 1986 (see ZDF, Jahrbuch 1987, p.142). ZDF provided 46.8% of output, and ORF a further 30.9% (see ZDF, Jahrbuch, 1987, p.142). ZDF also contributed to presentation and continuity, totalling 9.4% of output (ZDF, Jahrbuch, 1987, p.142). The commitment of ZDF's partners is also underlined by their willingness to shoulder more responsibility for

programming. In 1985 ZDF contributed a far greater proportion of the programming total (65%), with ORF and SRG contributing 27% and 8% respectively (see Konrad, 1985a, p.875).

What were the motives behind a cultural programming concept which is clearly not aimed at the mass audience? Was it a conscious attempt to provide a real alternative to existing public channels and private competitors? Or was the cultural emphasis based on the realisation that a channel similar in character to existing public channels was unacceptable to those political interests which support private broadcasting? It should also be remembered that ARD and ZDF are now legally bound by the *Inter-Land* agreement on the reorganisation of broadcasting to provide culturally-orientated satellite channels. They can no longer change their minds about this programme concept, or alter it in favour of more populist programming.

An insight into ZDF's strategy for 3SAT, was revealed to me by Walter Konrad, 3SAT's *Koordinator*. In an interview, he explained that ZDF's ideas for a cultural channel went back as far as 1978, long before politicians had given any thought to a possible concept for a second ZDF service (Interview 24.8.87). In the first instance, the nature of 3SAT was determined by a sense of common culture amongst German speakers. According to Konrad:

Bei 3SAT haben wir vorher gesagt, das soll ein Programm des deutschen Sprachraums sein, und soll vor allem das gemeinsame kulturelle Erbe den Zuschauern vorstellen, und da das gemeinsame kulturelle Erbe, ja nicht aus Unterhaltung nun besteht, also vor allem aus kulturträchtigen Inhalten, war damit automatisch die Farbe dieses Programms vorgegeben. (Interview 24.8.87)

Entertainment in the commonly accepted sense was therefore rejected as being unrepresentative of German language culture.

The second reason for the cultural emphasis was, according to Konrad, influenced by the realities of a developing competitive broadcasting market. He explained to me:

Zum zweiten sehen wir auch für ein solches Angebot eine echte Marktchance, denn wir wissen, unsere beiden Hauptprogramme haben durchaus einen relativ hohen Unterhaltungsanteil. Alle privaten Wettbewerber stützen sich fast ausnahmslos auf Unterhaltung, also es wird mehr oder minder sieben bis zehn mehr unterhaltende Angebote geben, von daher hätte es auch unter Marktgesichtspunkten an sich keinen besonderen Sinn "more of the same" zu machen, sondern es war interessanter, einen klaren Kontrast dagegen zu setzen. (Interview 24.8.87)

Culture was therefore considered to be the most realistic opening for 3SAT, given the fact that a further general entertainment channel would be lost amongst countless other entertainment offerings from both the public and the private sector.

In an article for *Media Perspektiven*, Konrad lists further reasons for the choice of a cultural channel. These include compatibility with existing public service obligations, the relationship between programme expenditure and viewing figures, and the effects of an extra service on ZDF's existing terrestrial service (1985a, p.874). One has to assume that the last reason played a reasonably large factor in the decision to pick a highbrow programme concept, because ZDF would be unlikely to create competition for its mainstream channel, which rakes in about 40% of its income from advertising, and which is forced to reach large audiences, in order to justify its share of the licence fee. The need to maintain the popularity of ZDF's premier channel is

especially important, given that 3SAT, which contains no advertising, will never earn ZDF any money. As Volker von Hagen, the former 3SAT *Koordinator* has stated: "Das Privatfernsehen braucht ein Programm, um Geld zu machen; 3SAT braucht Geld, um ein Programm zu machen" (von Hagen, 1985, p.146). Similar concerns are certain to have influenced the concept for Eins Plus, which has been described by ARD as "eine Programm-Visitenkarte des deutschsprachigen Rundfunks zum Auftakt des Satellitenrundfunks" (*Eins Plus - Ein deutschsprachiges Kulturprogramm für Europa*, MP 2/1984, pp.152-155; see also Schwarzkopf 1986, p.74).

Eins Plus and 3SAT are regarded as complementary to mainstream public service channels, and as a contrast to the predominantly entertainment-orientated private channels (see MP 2/1984, pp.152-155; Konrad, 1985a, p.875). This contrast is particularly evident on Saturdays, which are usually devoted to light entertainment on the mainstream public channels. At 3SAT, Saturday evenings are devoted to opera, theatre plays, or ballet (see 3SAT *Programmschema*, in Konrad, 1985a, p.877). At Eins Plus the emphasis is on serious literary films (see *Eins Plus-Programmschema*, in Schwarzkopf, 1986a, p.23). This approach is clearly seen as a way of bridging the programme deficits of existing public service channels. Konrad says of 3SAT: "Wir versuchen vor allem, die Programme und die Farben und die Ereignisse zu berücksichtigen, die in dem Hauptprogramm zu kurz kommen" (Interview, 24.8.87). Both 3SAT and Eins Plus are also viewed as a field for experiment which can contribute to the development of the terrestrial channels (see Konrad cit. in *Erfrischend anders Programm*, FR 2.4.1987). At Eins Plus, for example, programmes are frequently

premiered prior to transmission on the ARD network (Schwarzkopf, 1986, p.76).

In the context of 3SAT's and Eins Plus's main orientation, culture is meant in the broadest sense. Dietrich Schwarzkopf, writing about Eins Plus, states that the emphasis on culture is not supposed to be elitist or stereotyped (1986, p.76). Instead, he claims that it is meant to be comprehensive in nature, covering a wide variety of topics which are accessible to a broadly defined audience (Schwarzkopf 1986, p.76; Schwarzkopf, 1986a, p.19). At Eins Plus there has been no attempt to split the audience into target groups. Schwarzkopf asserts: "Jeder Zuschauer soll sich vom ganzen Programm angesprochen fühlen und aus dem ganzen Programm auswählen können" (1986, p.76). Programmes at Eins Plus are divided into distinct programming bands. These start at 19.00 with the band *Nachbar Europa*, a magazine slot covering a wide range of topics - gastronomy, art, literature, science, and religion - with a European slant, which changes its emphasis every day (see *Eins Plus-Programmschema*, in Schwarzkopf, 1986a, p.23). After the news, taken directly from the ARD network, the programming band *...und abends zu Eins Plus*, adopts a different theme each day, drawing from series, plays, films, and concerts. For instance, on Tuesdays the slot *Akzente durch Bündelung*, concentrates on the work of a particular author, director or actor (p.23). After *...und abends zu Eins Plus*, serious films are broadcast from Tuesdays to Fridays, and the pick of ARD's chat shows are broadcast at the weekend (p.23).

Similarly at 3SAT, ZDF claims that there is no attempt to narrowcast to the elite, but to provide a range of programmes covering all aspects of culture (see von Hagen, 1984, p.114; Konrad, 1985a, p.875). The major difference with ZDF's terrestrial services is the time when these programmes are broadcast. Walter Konrad, 3SAT *Koordinator*, told me:

Der kulturelle Schwerpunkt drückt sich im Programm dadurch aus, daß Sendungen, die im weitesten Sinne dem Kulturbereich zuzurechnen sind, einen sehr viel größeren Raum einnehmen und vor allem bessere Sendeplätze auch in der Primezeit erhalten. (Interview, 24.8.87)

Konrad writes about a "Differenzierungsprinzip" that aims to satisfy those needs, which distinguish large minority interests from the majority (1985a, p.875). The provision of culture and information also shows a willingness to persevere and experiment. As Konrad points out: "Gerade anspruchsvollere Programme brauchen eine gewisse Anlaufzeit, um sich beim Zuschauer durchzusetzen (1985a, p.878)".

The emphasis on German language and culture in both channels is reflected in a high proportion of German-language productions (Konrad, 1985a, p.875; Schwarzkopf 1986, p.76). With the exception of films, most programmes are in-house, co- or independent productions. Neither channel broadcasts foreign, in particular American, entertainment series (see Konrad, 1985a, p.875; Schwarzkopf 1986, p.76; Schwarzkopf, 1986a, p.21). Although films provide the bulk of foreign material, emphasis has been placed on serious cinematic output. At 3SAT, films have two regular scheduled slots; Mondays are dedicated to mainstream films, with Thursdays given over to "der künstlerisch anspruchsvolle Film" which has no regular place on ZDF's off-air service (Konrad,

Interview, 24.8.1987). Eins Plus broadcasts a greater proportion of films than 3SAT, but these are almost exclusively highbrow (see *Eins Plus-Programmschema*, in Schwarzkopf, 1986a, p.23)

The emphasis on culture in both channels could be interpreted sceptically, as it gives rise to the suspicion that these types of programmes might eventually be concentrated exclusively on Eins Plus and 3SAT. If this were to happen, the public terrestrial channels would be free to compete with commercial broadcasters by broadcasting programmes solely of mass appeal. Ultimately, this would result in less real choice for the viewer, because the majority of homes, which have no access to cable, cannot receive Eins Plus or 3SAT. Theoretically, constitutional judgements concerning the basic provision of services militate against such a development. When I questioned Walter Konrad about fears that ZDF might be using 3SAT to remove programmes of narrower appeal from its mainstream service, in order to allow more competitiveness with private television, he strenuously denied that this would ever be the case, and referred to the unchanged composition of the terrestrial service:

Von dieser Gefahr wird häufiger gesprochen, aber sie findet in der Realität also keine Entsprechung, denn das Schema des Hauptprogramms hat sich nicht geändert. Also wir haben nach wie vor die kulturellen Elemente im Hauptprogramm, die wir sie in den zurückliegenden Jahren gehabt haben. Es hat keine Abschiebung solcher Sendungen in 3SAT stattgefunden. 3SAT macht sehr viel eigenständig und verstärkt insgesamt natürlich das Angebot an solchen Sendungen, aber es hat nicht zu einer Entlastung von solchen Sendungen im Hauptprogramm geführt. (Interview, 22.8.87)

Writing in a similar vein, Dietrich Schwarzkopf attempts to reassure that Eins Plus will not become a cultural ghetto, with popular programmes concentrated on the terrestrial network:



Die Grundelemente des Programmauftrags gehören jedoch zur Grundausstattung eines jeden Vollprogramms. Das Erste Programm darf nicht etwa auf Kultur verzichten, weil Eins Plus als Kulturprogramm ausgewiesen ist. (1987, p.4)

Live programmes represent a further component in the programme strategies of Eins Plus and 3SAT. Eins Plus and 3SAT offer an opportunity to accommodate those events which, because of their length, cannot be accommodated fully on the terrestrial channels (Schwarzkopf, 1986, p.76). This is particularly the case for 3SAT, which has adopted a flexible approach in accommodating live events. Walter Konrad, 3SAT *Koordinator*, explained to me: "Nebenbei versteht sich 3SAT aber auch als Ereigniskanal. Wir versuchen zunehmend Live-Veranstaltungen in der Länge und zu dem Zeitpunkt, in dem sie stattfinden, ins Programm zu nehmen" (Interview, 24.8.87; see also von Hagen, 1985, p.146). In Konrad's view, the transmission of sports events in full gives 3SAT ample opportunities to develop into an "Ereigniskanal", and in the same interview he cited examples of a 24-hour motor-racing event from the Nürburgring, yachting regattas, and athletics (Interview, 24.8.1987). At Eins Plus, there is no regular scheduled spot for sport, but schedules are sometimes adapted to accommodate events which cannot be covered in full on the ARD terrestrial network (e.g. the World Ice Hockey championships) (Schwarzkopf, 1986, p.77).

When asked about possible competition from private broadcasters for the rights to show live sports, Konrad stated that he saw no threat from private competitors. He argued that the private channels

lack sufficient production capacity to show events in full, and that they are only interested in the most popular sports, which are not always of interest to 3SAT. He added:

Wir machen etwas, was die Privaten an sich bisher kaum machen. Wir fahren mit unserem Übertragungswagen zum Ereignis selbst und bleiben dabei und zeigen es vom Anfang bis Ende auf. Über diese Kapazitäten verfügen die Privaten bisher nicht. (Interview 24.8.87)

At 3SAT the policy of showing events in full, and at peaktime, is also applied to the arts. Konrad states:

Es ist bei uns selbstverständlich, daß auch große Konzerte wie zum Beispiel die Übertragungen vom Schleswig-Holsteiner Musikfestival in dieser Woche, aber auch andere Konzerte, daß Opernübertragungen, daß Balletaufführungen, daß Schauspielaufführungen einen Platz zur besten Sendezeit erhalten. (24.8.1987)

For financial reasons, repeats take up a large proportion of transmissions on both channels. In 1985 repeats made up 46% of 3SAT transmissions, followed by first runs (feature films, sport, and continuity) with 21%, and 19% taken directly from terrestrial channels, mainly in the form of news (Konrad, 1985a, p.876). Only 12% of programmes were specifically produced for 3SAT in 1985 (Konrad, 1985a, p.875). By 1987, ZDF was planning to devote approximately 50% of 3SAT transmissions to repeats, 40% to programmes taken directly from other channels, and about 10% to original first-run programmes produced specifically for 3SAT (in-house, co-productions and independent productions) (see ZDF, 1988, p.58). The level of repeat transmissions on Eins Plus is substantially higher than on 3SAT, because of a greater concentration on drama, and the lack of contributions from other partners, in ZDF's case ORF and SRG.

Although ARD and ZDF would like to increase levels of first-runs on 3SAT and Eins Plus, attempts have been made to emphasise the positive aspect of repeats. Schwarzkopf, writing about Eins Plus, claims that they offer "die interessante Chance zur Aktivierung des Programmvermögens" (1986a, p.20). In this respect 3SAT has a clear advantage over Eins Plus because of the extensive involvement of ORF and SRG. As Konrad points out: "Das sind dann für die Bundesrepublik betrachtet im keinen Fall Wiederholungen, sondern das sind originäre Programme" (Interview 24.8.1987).

In both cases there are plans to increase levels of first-run programming (see Schwarzkopf, 1986a, p.19). At Eins Plus, programmes are sometimes premiered prior to transmission on the ARD network (see Schwarzkopf, 1986, p.76). However, ZDF seems to be making more concerted efforts to increase levels of first runs. According to Schwarzkopf: "Neuproduktionen für Eins Plus kommen erst nach einer Gebührenerhöhung in Frage (cit. in Pitzer, 1987, p.30)". Once continuity and presentation are excluded, original 3SAT productions of live sport and culture take up 5% of output (see Pitzer, 1987, p.29). There are now plans to increase these by 5% a year until a level of 25% is reached in the early 1990s (see Pitzer, 1987, p.29; Konrad, Interview 24.8.1987). According to Schardt, ZDF *Programmdirector*, the figure of 5% was chosen, because this is what ZDF can afford (Interview, 11.8.1987). The increases will concentrate on the categories of culture and information, as there are no plans to produce drama or entertainment specifically for 3SAT because of the

high costs of these productions (Konrad, Interview, 24.8.1987). These will continue to be mainly repeat showings. Walter Konrad told me:

Wir werden allerdings sicher in keinem Zeitpunkt eigene Fernsehspiele tun oder große Unterhaltungsschauen machen. Das ist nicht unsere Aufgabe. Hier werden wir nach wie vor die Programme der Mutterhäuser übernehmen, aber da die vom ersten Mal wegen der stärkeren Konkurrenz auch immer weniger Zuschauer finden werden, ist es sicher ein interessantes Angebot auch bei der zweiten Ausstrahlung. (Interview 24.8.1987)

Although both channels are broadly culturally orientated, both stress different types of programming. As Figure 5.1 shows, while 3SAT transmits more information and sport, Eins Plus places more emphasis on culture, films and entertainment. 3SAT's emphasis on information and Eins Plus's emphasis on drama and films is also shown by comparing schedules (see Figure 5.2).

Fig. 5.1

TRANSMISSION TYPES ON 3SAT AND EINS PLUS (%)

	3SAT	Eins Plus
Culture	38.4	52.3
Information and sport	28.9	6.8
Entertainment and films	23.6	39.1
Continuity	9.1	1.8

(Source: Pitzer, 1987, p.30).

Fig. 5.2

## 3SAT SCHEDULE 3rd-9th OCTOBER 1987

	19.00	20.00	21.00	22.00	23.00	24.00
Sat	N *I*		Opera	*	Info * Music *	
Sun	N*I*I*	Film	* Chat show *		Info *	N
Mon	N *I*	LE * Info *	Info *I*S*	N *	Film	
Tues	N *I*	Drama * Info *	Info*I*S*	N *	Info *	N
Wed	N *I*	Film *	Info *I*S*	N *	Info *	N
Thur	N *I*	Drama * Info *	Info*I*S*	N *	Chat show	
Frid	N *I*	Drama * Info *	Info *I*S*	N *	Film	*

## EINS PLUS SCHEDULE 3rd-9th OCTOBER 1987

	19.00	20.00	21.00	22.00	23.00	24.00
Sat	Info*	Info* N *	Drama *	Drama*	Info	
Sun	Info	* I * N *	Drama *	Film	*	Film *
Mon	Info	* I * N *	Drama *	*Chat show*	Music	* N
Tues	Info	* I * N *	Film *		Film	* N
Wed	Info	* I * N *	Drama *	Info *	Film	*
Thurs	Info	* N *	Film *		Film	* N
Frid	Info	* I * N *	Concert *		Film	* N

Key: I/Info/Information, N/News, S/Sport, LE/Light Entertainment  
(Source: Hörzu, 25.9.1987)

In a more detailed two-week analysis of programmes undertaken in February 1987, Krüger established that information accounted for 41% of transmissions on 3SAT compared to 33% on Eins Plus. Fiction and light entertainment took up 36% of 3SAT's transmission time compared to 59% on Eins Plus (Krüger, 1987, p.551). At Eins Plus feature films

and television drama constituted 29% and 20% of transmissions respectively, compared to only 11% and 8% on 3SAT. Eins Plus's reliance on feature films was also reflected by a higher proportion of purchased programmes, 33%, compared to 17% at 3SAT (Krüger, 1987, p.557).

Both channels devote a high proportion of information output to non-political information, usually reflecting European and cultural aspects. At 3SAT these totalled 15.3%, compared to 13.3% at Eins Plus (Krüger, 1987, p.551). At Eins Plus there has been an increase in the amount of current affairs. In a study conducted in 1986 such programmes did not register at all, but in 1987 they accounted for 7% of all transmissions (Krüger, 1987, p.551). Current affairs had been poorly represented on Eins Plus in 1986, apparently because it is more difficult to coordinate the contributions of nine stations (see Pitzer, 1987, p.30). The greater proportion of information on 3SAT is a reflection of the commitment of its partners, ORF and SRG, who provide much of this type of material, including news broadcasts. 3SAT's claim to be an "Ereigniskanal" seems justified by a 7.4% proportion of transmission time devoted to sport (see Krüger, 1987, p.551). During the period of investigation, this programme category did not appear on Eins Plus (see Krüger, 1987, p.551). Furthermore, the proportion of sport on 3SAT was almost double the amount shown on ZDF's terrestrial service during peak time transmissions (see Krüger, 1987, p.556).

3SAT was also used by ZDF as a test of cooperation with the local press. The so-called *Network-System* entailed ZDF providing a framing

programme for a local opt-out provided by local publishers and was seen as "eine komplementäre Kooperationsform" (Stolte, 1984a, p.291). The reasons proposed by Alois Schardt, ZDF *Programmdirektor*, for this type of cooperative venture appear quite altruistic:

Es war der Versuch, der seinerzeit in der Politik eine große Rolle spielte, daß nämlich auch ein kleiner Verleger oder ein Verbund kleinerer Zeitungsverleger die Möglichkeit hat, sich in dem neuen Medium Fernsehen zu etablieren. (Schardt interview, 11.8.87; see also Stolte, 1984a, p.291)

More sceptically, it can be viewed as an attempt to absorb demands for private broadcasting, while still maintaining ZDF's autonomy and supremacy (see Stolte, 1984a, p.291). In the event this "Meilenstein in der medienpolitischen Entwicklung" (Stolte cit. in *EPF hat Kooperation mit dem ZDF gekündigt*, FR 25.7.1986) was only taken up by the Erste Private Fernsehgesellschaft (EPF), run by the Rheinpfalz Verlag as part of a cable pilot experiment in Ludwigshafen. EPF ended the cooperation in July 1986, prior to the conclusion of a similar agreement with the private broadcaster, SAT 1 (FR 25.7.1986).

Walter Konrad, 3SAT *Koordinator*, denied that the *Network-System* had ever been seen as a future strategy. In his opinion it was a "eine mögliche Zukunftsstrategie" to test the workability of cooperation (Interview, 24.8.1987). He maintained that the experiment had worked successfully for three years, but was overtaken by political developments, namely the availability of terrestrial frequencies for the private channel, SAT 1, which gave EPF the chance of reaching a greater audience than was possible with 3SAT (Interview, 24.8.1987; also Schardt, Interview, 11.8.1987). In Schardt's opinion the idea of cooperation is not dead, because small private programme

providers might eventually find that 3SAT is a better option than SAT 1, which operates along strictly commercial lines. He speculated: "Es könnte leicht vorkommen, daß sich dann kleinere Verleger oder Verlegergruppen überlegen ob nicht, daß was wir mal angeboten haben, eine Chance ist" (Interview, 11.8.1987). Similar thoughts were expressed to me by Walter Konrad when referring to EPP's new cooperative deal with SAT 1:

Ob das auf die Dauer eine Existenzgrundlage bietet, muß man abwarten, denn die Sorgen oder die Existenzschwierigkeiten, die die EPP vorher gehabt hat, hat sie nach wie vor. . . es ist nicht ausgeschlossen, daß im irgendeinem späteren Zeitpunkt doch einmal auf diese Möglichkeiten zurückkommt, wenn andere Hoffnungen enttäuscht sind. Also theoretisch steht dieses Angebot nach wie vor. (Interview 24.8.1987)

#### 5.1.2 Limits to further development

Viewing figures for both channels have not been impressive, but this is mainly determined by the nature of the programmes, which do not have mass appeal. Growth in audiences has also been hindered by dependence on cable. In cabled households 3SAT is watched for a total of six minutes a day; Eins Plus only manages three minutes (see Darschin/Frank, 1988, p.224). This constitutes a 3% and 1% respective share of television consumption in cabled households (see Darschin/Frank, 1988, p.224). The ARD third channels, which are closest to Eins Plus and 3SAT in content, manage an 11% viewing share of cabled households (Darschin/Frank, 1988, p.224). Given the low viewing share of both, the failure of TV-Sat, described in Chapter 4, must have been a disappointment as it offered "die Möglichkeit, die



bisherigen Begrenzungen des Kabels zu springen" (Interview, Konrad, 24.8.1987).

ARD and ZDF are committed to their satellite ventures, but Eins Plus is clearly the less popular of the two (see *Nach dem Ende von 'Europa TV' dann das Aus für Eins Plus: ein Programm nicht populär genug, um gegen die private Konkurrenz zu bestehen; nicht Programm genug, um eine Alternative zu den Dritten Programmen oder zu 3SAT zu sein*, KuR 13.12.1986). 3SAT would appear to have a clearer profile, based on information and live programmes, compared to the emphasis on repeat drama at Eins Plus. The stronger profile of 3SAT may be due to ZDF's centralised structure, which aids quick policy decisions, and the involvement of ORF and SRG in providing programmes. By contrast, ARD has found it difficult to maintain unity, and some ARD stations, in particular BR, are more committed to developing their third channels than Eins Plus (see *Ein böses Erwachen aus den Satelliten-Träumen?*, FR 4.10.1985, p.26; Pitzer, 1987, p.30). Although contributions by individual stations to Eins Plus are based on the same key as contributions to the ARD network, some ARD stations have lagged behind in their support (see Pitzer, 1987, p.30). 3SAT also had the advantage of a year's head start over Eins Plus, and was not hampered by the same degree of political controversy which dogged ARD's efforts. Some maintain that greater political support for 3SAT is tied to the fact that several prominent CDU politicians sit on ZDF's supervisory bodies (see Hall, 1984b, p.144).

Leaving political wrangles aside, both channels clearly provide a chance to show those programmes which are marginalised on terrestrial channels, and in this sense they offer the viewer a real alternative to private satellite channels and mainstream public television. However, whether Eins Plus and 3SAT can develop, in terms of more original programming, depends on continued financial support. Neither carries advertising, which makes them dependent on the licence fee set by the *Länder*, and on the continued willingness of ARD and ZDF to invest. According to Alois Schardt, ZDF *Programmdirektor*, the innovative aspect of 3SAT should play a role in convincing the *Länder* to consider both channels when raising the licence fee: "Ich meine die Innovationsleistung, die damit erbracht wird, muß ja nun auch den Gesetzgeber etwas wert sein" (Schardt 11.8.1987). Walter Konrad, 3SAT *Koordinator*, sees an advantage in the lack of advertising on 3SAT, because it allows experimentation, but ultimately he admits that the future of 3SAT is closely tied to ZDF's financial position. He says:

Wir bekommen, vorausgesetzt dem ZDF selbst geht es insgesamt finanziell, unsere Finanzbedürfnisse finanziert vom ZDF, und wir müssen deshalb nicht unbedingt nach den Einschaltquoten um jeden Preis schielen. Das heißt, wir können das Programm machen, das wir für richtig und notwendig halten, unabhängig von den Einschaltquoten, auch wenn wir die natürlich nicht völlig außer Acht lassen. (Interview 24.8.87)

Konrad is aware that ZDF's advertising revenue, on which it is almost 50% dependent, may be reduced with private competition, but he points out that whatever happens, ARD and ZDF are obliged to continue with 3SAT and Eins Plus by the inter-*Land* agreement on the reorganisation of broadcasting. The public satellite channels are "nicht nur eine Möglichkeit, sondern eine Verpflichtung" (Interview,

24.8.1987). 3SAT's future is therefore inextricably interwoven with the ability of ZDF's terrestrial service to provide popular programmes which attract large audiences and advertising revenue. Konrad argues:

Es (ZDF) wird sich allerdings im Hauptprogramm sich so stark machen müssen in der werbeentscheidenden Zeit zwischen 18 und 20 Uhr, daß es auch in Zukunft versucht, fast die Hälfte der Gesamteinnahmen aufzubringen, die die Werbung bisher einbringt, also dieses Programm muß um jeden Preis attraktiv gehalten werden, auch im Sinne von hoher Zuschauerzahl. (Interview 24.8.1987)

However, ultimately the success and future of both satellite channels depend on their ability to offer programmes which are not generally available at peak time on other programme channels, be they private or public. This also affects the financial security of the mainstream public stations. As Konrad points out:

Im übrigen müssen wir die Gesellschaft davon überzeugen, daß wir unseren Auftrag auch tatsächlich wahrnehmen, das heißt, daß wir auch ein Programm mit kulturellem Schwerpunkt machen, denn unsere Chancen, eine Gebührenerhöhung auch in der Zukunft zu bekommen, werden sicher geringer sein, wenn wir uns von unserem Auftrag entfernen. Dann werden wir erst recht keine Gebührenerhöhung bekommen. (Interview, 24.8.1987)

## 5.2 The involvement of public service stations in cable

Although ARD and ZDF's involvement in cable has been less significant than their involvement in satellite television, it still forms part of their demand to be allowed to participate in new technological developments. As the ARD supervisory committees pointed out, "Keine Programmgestaltung darf ihm (public service broadcasting - JP) rechtlich oder tatsächlich (wirtschaftlich) versagt sein" (Erklärung der Gremienvorsitzenden der ARD vom 19.10.1983 zur Position

*der öffentlich-rechtlichen Rundfunkanstalten in der künftigen Medienlandschaft, MP 11/1983, p.802).*

Public broadcasting's involvement in cable came about as a result of the instigation of four experimental cable pilot projects. These had been proposed in 1976 by a commission appointed by central government, the Kommission für den Ausbau des technischen Kommunikationssystems (KtK) (see Chapter 3; KtK, 1976, pp.4-38). The pilots were originally intended as a means of testing the acceptance, effects, and viability of cable, prior to a permanent decision on its introduction (see KtK, 1976, pp.13-15). However, as the prospect of private broadcasting became a reality, any semblance of their reversibility or experimental nature was jettisoned. All the projects, with the exception of the Dortmund project, were used to pursue a media policy aimed at breaking the public service monopoly by introducing more television channels.

Limited to clearly defined local areas the pilot projects were supposed to encourage local communication. Instead, they became a launching pad for nationally distributed commercial television. Private local television stations found that the small audiences available to them within the cable projects were not large enough to attract sufficient advertising revenue (see *Lokal-TV: Pleiten im Kanal*, Wirtschaftswoche 14.8.1987, pp.64-65). Plagued by financial difficulties incurred by high costs and lack of revenue, several stopped their operations altogether (see Wirtschaftswoche 14.8.1987, p.64; see also *Süddeutscher Verlag beendet TV-Kooperation*, FR

16.4.1987). A major problem was the inability to find sufficient material to fill a broadcasting slot. Some local commercial broadcasters see a solution to their problems in the availability of local terrestrial frequencies (see Schardt, Interview, 11.08.1987; Konrad, Interview, 24.8.1987). This frees them from dependency on cable, and allows them to operate as local opt-outs within an attractive framing programme, such as SAT 1.

With the exception of the Dortmund pilot project, where WDR undertook a number of local programming initiatives, there were few new public programme channels specifically designed for the cable projects. ZDF used the Ludwigshafen project to initiate ZDF2, its time-shifted repeat service, later to become the culturally-orientated satellite channel, 3SAT. These services were used as a framing channel for the now defunct commercial, local broadcaster, Erstes Privates Fernsehen (EPF), owned by a local newspaper publisher, the Rheinpfalz Verlag (see Stolte cit. in Hall, 1984, p.13). The 90 minute opt-out ended when EPF transferred its attentions to SAT 1 in order to gain access to local terrestrial frequencies (see *EPF hat Kooperation mit dem ZDF gekündigt*, FR 25.7.1986). ZDF also launched the *Musikkanal*, a specialist channel, which broadcasts different genres of music each day to each of the four cable projects (see von Holleben, 1985, pp.153-156). SWF, the local public station in the Rhineland-Palatinate, provided an educational television service, the *Schlauer Kanal*. However, this did not survive the end of the Ludwigshafen project in December 1986.

Public service involvement in the Ludwigshafen, Munich, and Berlin pilot projects was limited by a number of other factors. Legislation for the Ludwigshafen pilot project did not allow ZDF and SWF, the indigenous ARD station, to provide more than one extra service each (*Landesgesetz über einen Versuch mit Breitbandkabel vom 4. Dezember 1980*, in Bauer, Detjen, Müller-Römer, 18.4.2, Paragraph 15). They were not permitted to provide regional or local channels, or to broadcast advertising aimed at the local or regional market (see Paragraph 15, Clause 2). Additional services were only possible if there was sufficient capacity, and if further public channels offered no threat to the chances of "free" programme providers (see Paragraph 15, Clause 2). The limitations on the involvement of public channels in Ludwigshafen were clearly aimed at protecting new private channels (see *Begründung des Gesetzes*, in MP 5/1980, pp.311-322, p.318).

In Munich, BR and ZDF were initially responsible, albeit nominally, for the coordination of all new broadcasting channels, because the Bavarian constitution stipulates that broadcasting must operate under public supervision (see Paragraph 2, *Grundvertrag für das Kabelpilotprojekt München*, 16. Juli 1982, in Bauer, Detjen, Müller-Römer, 18.5.2). However, private broadcasting channels could still operate much as they did in Ludwigshafen. The ambiguity of BR's and ZDF's role was removed with the passage of the *Medienerprobungs-und-entwicklungsgesetz* (MEG) on 15th November 1984 (in MPD, I/1985, pp.1-10). This placed the supervision and coordination of private broadcasting in Bavaria in the hands of a new public authority, the Bayerische Landeszentrale für neue Medien. In Berlin, the local ARD

station SFB was involved in neither supervision nor new programme initiatives. It decided against the introduction of new services, arguing that it lacked sufficient financial resources (see *Meldung*, MP 10/1984).

This leaves Dortmund, a project in which WDR initiated a number of new broadcasting experiments, and for which it was ultimately responsible. According to Pätzold, Dortmund constituted

ein Testfall für die Einlösung dieses Anspruchs des öffentlich-rechtlichen Rundfunks auf Entfaltungsfreiheit, ein Testfall für seine Evolutionsfähigkeit unter den besonderen Prämissen der gesellschaftlichen Verantwortung und des kulturellen Auftrags. (1983, p.849)

WDR worked out new concepts for Dortmund, which went beyond using cable just as a new means of distributing television. Its ideas were shaped by the local character of the pilot, which only encompassed 10,000 homes. The emphasis on local concerns was something totally new for public broadcasting, and it had to find ways of addressing the local public in a more direct way (see Pätzold, 1983, p.849). Dortmund was the most experimental of all the pilot projects. Its legacy is not in the increased commercialisation of broadcasting, but in the practice of alternative forms of local communication.

#### 5.2.1 Dortmund - the alternative

Originally, private broadcasting channels were to have been excluded from the Dortmund cable pilot project (see Paragraph 5, *Gesetz über die Durchführung eines Modellversuchs mit Breitbandkabel*, in MP 12/1983, pp.886-891). As the only project taking place in an

SPD Land, North Rhine-Westphalia, the exclusion of private channels would have provided an opportunity to demonstrate that cable and a non-profit approach under public control, as championed by the SPD, were not incompatible. However, political events elsewhere meant that the exclusion of private broadcasting was dropped even before the start of the pilot project on 1st June 1985. In 1984 the SPD agreed to tolerate private broadcasting (see *Medienpolitisches Aktionsprogramm 1984 der SPD-Medienkommission*, in MP 2/1984, pp.149-151). In February 1984, the SPD *Länder* agreed to allow the award of a transponder on the ECS 1 telecommunications satellite to a private programme provider (see *Gemeinsames Satelliten-Nutzungskonzept der Länder. Vorläufiges Ergebnisprotokoll der Besprechung der Ministerpräsidenten der Länder*, in MP 2/1984, p.152). The existence of a nationally distributed private satellite channel made it difficult to justify the exclusion of private channels in Dortmund. This changed on 12th March 1985 when a provisional law was passed by the North-Rhine Westphalian parliament. This allowed the reception of satellite channels from other *Länder* in North Rhine-Westphalian cable networks (see *Gesetz über die vorläufige Weiterverbreitung von Rundfunkprogrammen in Kabelanlagen-Landesrundfunkausschuß, Vorschaltgesetz*, in MPD II/1985, pp.103-4).

Some believed that the introduction of private satellite channels in Dortmund would distort the character of the project (see Gronwald, 1985, p.38; Pätzold, 1985, pp.450-52). It certainly placed WDR's experimental services under strong competition from private entertainment-orientated channels. Erdmann Linde, the project leader



in Dortmund, felt that WDR's new local offerings were strong enough to compete with commercial satellite channels, but he felt that WDR's subscription services might suffer against ostensibly free commercial services (*Journalist-Interview* in, *journalist* 5/1985, p.16).

In spite of the changes, Dortmund was clearly a success in terms of its original aim: the encouragement of local communication. However, Linde regrets that the other ARD stations have failed to recognise Dortmund as ARD's contribution to the cable pilot projects (cit. in Grefe, 1986, p.3). Claims about Dortmund as a future strategy for public broadcasting were not received enthusiastically by the public broadcasters. At the launch on 1st June 1985, Johannes Rau, prime minister of North Rhine-Westphalia called the project an important test of public service broadcasting's "Reformfähigkeit" in the face of private competition (*Kabelpilotprojekt Dortmund gestartet*, FR 3.6.1985, p.20). This view was contradicted by representatives from the public stations, and is perhaps indicative of their lack of long-term commitment. Both von Friedrich Wilhelm von Sell, *Intendant* of WDR, and Dieter Stolte, *Intendant* of ZDF, underlined the significance of the project's concentration on local programming (FR 3.6.1985, p.20). However, Stolte felt that strategic questions for the future were unlikely to be answered by isolated cable projects. He believed the future lay in traditional terrestrial channels, which could be used to improve local profile, foreign reporting, and the production of improved domestic entertainment programmes (FR 3.6.1985, p.20). Von Sell said that there could be no talk of strategy as long as "die

Valuta der Konkurrenten noch keineswegs erwiesen ist" (cit. in FR 3.6.1985, p.20).

Many supporters of public broadcasting had hoped that Dortmund would provide an opportunity for public broadcasting to justify its further existence, and to experiment with new types of programme and production techniques (see Grönwald, 1985, p.39; Pätzold, 1985, pp.451-2; Pätzold 1986, p.433). This may have been over-stated in terms of the future of public broadcasting, as it is likely to remain predominantly concerned with national and supra-regional programming, but the local initiatives did focus on alternative ways of introducing local communication without undue reliance on commercial consortia (see Pätzold, 1985, p.451).

Given the nature of the project, it is not surprising that it received critical appraisal from academic publications, especially when compared to the commercial anathema of Munich, West Berlin, and Ludwigshafen (see Hymmen, 1984, p.51; Grefe, 1985, p.3pp). However, when the project began, it received far less press attention than either Munich or Ludwigshafen. This was due to the nature of the project, which unlike the others was not intended as a gateway for commercial broadcasting and was therefore less obviously newsworthy (see Pätzold, 1985, p.451).

### 5.2.2 The structure of the Dortmund pilot project

The Dortmund pilot project was established for a period of three years by a cable pilot law, passed by the North Rhine-Westphalian parliament on 20th December 1983 (*Gesetz über die Durchführung des Modellversuchs mit Breitbandkabel*, in MP 12/1983, p.886-891). WDR, which was responsible for the project, set up a project headquarters in Dortmund, the *Projektstelle*, to administer the project and produce the new channels (Paragraph 6, p.887). A *Projektleiter* was appointed by WDR to run the headquarters (Paragraph 7, p.888). Supervision of the project was undertaken by a project council, the *Projektrat*, composed of 27 members, drawn from various local groups and institutions (Paragraph 8, p.888). The members of the council had to be residents of Dortmund, whose knowledge and experience of local affairs would benefit the project (Paragraph 8.5, p.888). Six members were chosen by the WDR broadcasting council to represent the individual interests of Dortmunders (Paragraph 8.2, p.888). The council's duties included advising the project management and WDR on all questions associated with the pilot, and decisions on finance, staffing, administration, and general programme policy (Paragraph 9, p.889).

The project covered an area of 40,000 households in one part of Dortmund. It had a budget of DM101.7 million for three years (see Pätzold, 1985, p.453). Approximately two-thirds of this, DM64 million, was provided by WDR, with DM2.7 million given by the *Land* of North Rhine-Westphalia (Pätzold, 1985, p.453). The remaining DM35

million was raised from a proportion of the licence fee, which had awarded to fund all four pilot projects (see Pätzold, 1985, p.453; Kleemann, 1987, p.230). Those who took part in the project paid DM7.50 a month to receive the new channels. DM2.50 was paid to ZDF for its new channels. DM8.50 a month, was paid to the *Bundespost* (see Bauer, Detjen, Müller-Römer, 18.3.1, p.2).

### 5.2.3 A programme policy for Dortmund

The new services offered by WDR included a local radio channel, a local television channel, a cable text service, and six specialist pay-TV channels. These services were not allowed to contain advertising (see Paragraph 1.5, p.886). WDR also provided the facilities and technical expertise for access channels in both radio and television (see Paragraph 10, p.889). Of all the new programme initiatives, those concerned with local broadcasting were the undisputed success and focal point of the project. The local character of the project was clearly set down in programme policy guidelines approved by the WDR *Rundfunkrat*, which stated that:

Die Programmangebote des lokalen Hörfunks und Fernsehens sollen die gesellschaftliche, politische, ökonomische und kulturelle Vielfalt der Stadt Dortmund und ihres unmittelbaren Einzugsgebietes widerspiegeln. Darüber hinaus sind allgemeine Entwicklungen und Vorgänge in ihren Auswirkungen für Dortmund darzustellen. (*Richtlinien für die Programmrahmenplanung vom 28. August 1984*, in Bauer, Detjen, Müller-Römer, 18.3.8, Paragraph 2.1, p.1)

The access channels gave Dortmunders an opportunity to produce their own programmes free of charge. Unlike the Munich or Ludwigs-hafen experiments, only local residents were allowed to use them,

making them a genuine local medium (see Paragraph 10.1, p.889). This prevented a monopolisation by video enthusiasts and students of journalism, as had been the case in Ludwigshafen (see Kleemann, 1987, p.235). The Dortmund access channels generally received more critical appraisal than their counterparts in the other projects (see Böhmer, 1987, pp.81-89). In Ludwigshafen they had had to compete for attention with other privately run local channels (see Böhmer, 1987, p.81). In Dortmund the only local competitors were WDR's own local offerings in radio and television.

The six special interest channels included Gestern (a repeat service), a sport and information channel, an educational service (Die kluge Sieben), a cultural channel, a family channel and an entertainment channel (see Grefe, 1986, pp.7-8). Gestern and the sport and information service were free of charge. The remaining four were offered as pay services, costing between DM0.25 and DM0.50 extra a week (see *Satzung des Westdeutschen Rundfunks Köln Kabelpilotprojekt Dortmund* 28.8.84, in Bauer, Detjen, Müller-Römer, 18.3.7., p.4). Payments were metered by a converter on top of the television set, a *Fernsteuerbare, adressierbare Teilnehmerkonvertersystem* (FAT). The converter also provided a two-way link with the cable headquarters (Kleemann, 1987, p.235). To fill programme requirements of 75 hours a day, programmes were acquired from the other ARD stations which had previously been broadcast on other channels (Kleemann, 1987, p.23). One has to assume that the number of households using the subscription channels did not justify their financial costs, because they ceased to exist when the project came to an end in June 1988.

Radio Dortmund, a local radio channel, initiated by WDR, was clearly the outstanding success of the whole project (see Grefe, 1986; Pätzold, 1986, p.434). Part of its success can be attributed to the fact that it was made available on FM radio to a much wider potential audience of 2 million listeners, thus liberating it from distribution by cable alone (see Kleemann, 1987, p.230).

In contrast to commercial efforts at radio, which have concentrated on popular music (see Teichert, 1987, pp.275-293), the emphasis at *Radio Dortmund*, was clearly placed on journalism. There was also a conscious effort to distinguish the channel from other WDR radio stations by concentrating on local life, news, culture, and business (see Pätzold, 1986, pp.434-5). National and international news was taken from WDR, but attempts were made to relate the significance of these events to life in Dortmund (Kleemann, 1987). The daily schedule, as detailed in Figure 5.3, consisted of topical local information, music, phone-ins and tips about local events.

Radio Dortmund appears to have filled a gap in local information to which other local media, in particular the local press, were not paying sufficient attention (see Grefe, 1986, p.4). It was particularly successful in bringing local scandals to the fore (see Grefe, 1986, p.4). According to Grefe, this engendered a certain amount of hostility from the press, which devoted little press coverage to the project (1986, p.5).

Fig. 5.3

PROGRAMME SCHEDULE RADIO DORTMUND - MONDAY TO FRIDAY

- 05.00 *Frühschicht*, an early morning news and current affairs programme
- 08.45 *Zeitfunk*
- 09.45 *Musikpavillon*, taken from WDR 4
- 12.05 *Funkbude*, local music, culture and information
- 13.05 *Hit-Club*, a music request show
- 14.05 *Trallafitti*, music and information for young listeners
- 16.30 *Stadtgespräch*, a local discussion programme
- 17.30 *Durchwahl*, a phone-in programme
- 18.30 *Echo des Tages*, taken from WDR
- 19.00 *Spieluhr*, for children
- 19.10 *Abendstudio*, magazine covering music, literature, and the arts
- 20.15 *Dabei in Dortmund*, the transmission of local events in conjunction with the project's local television channel

(Source - Pätzold, 1986, p.435; see also *Für viele der liebste Sender*, FR, 10.6.1986, p.10)

Radio Dortmund gave WDR a chance to test new types of working practices. The seven journalists on the editorial team did not specialise in certain subject areas, and fulfilled a number of tasks not generally associated with journalism, including presentation, production, and direction (see Kleemann, 1987, p.231). News was gathered by twelve reporters who worked for both Radio Dortmund and the project's local television channel. WDR's decision to pool resources in this way was connected with a test of the limits of bi-mediality, and its usefulness in reducing costs (see Kleemann, 1987,

p.231). Costs were also kept down by relying on contributions from between 80 and 100 freelance journalists, many of whom were students (see Pätzold, 1986, p.435). Direct costs per minute, excluding the cost of personnel, were about DM25 for editorial content and DM2 for musical content, compared to DM108 per minute for radio undertaken by the ARD stations (see *Was sonst außer Werbung, Jingles und Musik?*, FR 6.4.1987).

The local radio channel was clearly popular with listeners. A telephone survey of 146 people undertaken in June 1986, revealed that 85% knew of Radio Dortmund's existence (see Pätzold, 1986, pp.433-443, p.438). 80% had listened, and of these, 56% listened regularly or occasionally and 26% were regular listeners (Pätzold, 1986, p.438). This showed that the channel was as popular as WDR2, the most popular radio station in the area (Pätzold, 1986, p.438). A further survey undertaken for WDR in April 1987, revealed that 28.7% of Dortmunders listened to Radio Dortmund during the week, a higher proportion than either WDR2 or WDR4 (see Kleemann, 1987, p.236; *Was sonst außer Werbung, Jingles und Musik?*, FR 6.4.87).

WDR's local television channel in Dortmund had no public service forerunners. Apart from Saturdays, when there was no local news, it broadcast 1 hr 45 minutes of original local programming daily between 19.15 and 21.15. The service was padded out by repeats later in the evening and the next morning, and by regional programmes taken from WDR's third channel, and news taken from the ARD network. Figure 5.4 shows the programme schedule.



Fig. 5.4

PROGRAMME SCHEDULE - LOCAL TELEVISION IN DORTMUND

09.15-10.00	Repeat of local news and <i>Stadtjournal</i>
12.15-13.00	Repeat of <i>Dabei in Dortmund</i>
13.15-14.00	Repeat of local news and <i>Stadtjournal</i>
18.50-19.10	North Rhine-Westphalian regional news taken from WDR's third television channel.
19.15-19.40	Monday to Friday: Local news (first showing) Sunday: 19.15-19.20 Local news, then local sport
19.40-20.00	Monday to Friday: <i>Stadtjournal</i> , <i>Lokales Feature</i> , <i>Stippvisite</i> , <i>Gespräche der Woche</i> (first showing)
20.00-20.15	National news taken from the ARD network
20.15-21.15	Monday, Wednesday to Friday: <i>Lokale Brennpunktthemen</i> - <i>Dabei in Dortmund</i> , local entertainment. Sundays: Regional news taken from WDR's third channel
22.00-23.45	Repeats of 19.15-20.00 and 20.15-21.15

(Source: Pätzold, 1988, p.6)

On weekdays at 19.40 different programme formats were broadcast on separate days (Kleemann, 1987, p.232). *Stadtjournal*, transmitted on Mondays and Wednesdays, looked at local culture, history, and entertainment. On Tuesdays, programmes concentrated on topics viewed from a local perspective. The areas covered included local sport, trade unions, homosexuality, local art, and the Jewish community in Dortmund. *Stippvisite* on Thursdays, took a look at local institutions, businesses, and museums. *Gespräch der Woche* on Thursdays was a local discussion programme. *Dabei in Dortmund* at 20.15 provided an hour of coverage on local events, culture and entertainment (See Kleemann, 1987, p.233). Parts of this programme were broadcast on Radio

Dortmund as part of the test on bi-mediality (see Pätzold, 1985, p.453; *Für viele der liebste Sender*, FR 10.6.1986, p.10; Kleemann, 1987, p.233). The direct costs of programmes, excluding staffing or technical costs, were low at about DM200 an hour (Kleemann, 1987, p.233).

In spite of competition from 20 other channels, the local television channel achieved a 20% rating, which was quite considerable considering the technical and personnel resources available to it. According to research, undertaken in the spring of 1987, the channel had a 15% share of the audience in the early evening (see *Glanzstück wurde das lokale Radioprogramm*, FR 19.5.1987). This placed it just behind ZDF, on the same level as SAT 1 and higher than either the ARD network or RTL Plus. It also had twice as many viewers as the third television channels, which broadcast regional programmes during this period (see FR 19.5.1987).

#### 5.2.4 Beyond the pilot project

As the experiment drew to its close in June 1988, increasing thought was given to its future. It was clear that the project would not continue in its entirety, but the success of Radio Dortmund and the local television channel could not be ignored either (see *Glanzstück wurde das lokale Radioprogramm*, FR 19.5.1987).

The Dortmund *Projektkommission*, which had been set up to research the project, recommended that the local television channel and Radio Dortmund should continue after the project had ceased (see

*Lokalprogramme Dortmund*, KuR 1.7.1987, p.11). They clearly regarded both as a future model for local broadcasting in North Rhine-Westphalia when they described them as a "Qualitätsparameter für andere Lokalsender bei der Herstellung lokaler Öffentlichkeit" (KuR 1.7.1987, p.11).

The WDR management was not pleased about these recommendations, and in this respect WDR appears to have been a victim of its own success. The WDR *Intendant*, Friedrich Nowottny, wanted the WDR *Rundfunkrat* to delay a decision about the future of both channels prior to cancellation (see KuR 1.7.1987, p.11; *Lokalfunk des WDR in Dortmund bleibt*, FR 6.7.1987, p.6). His opposition to their continued existence was based on concern about WDR's diminishing financial resources, coupled with uncertainty about the next licence fee increase (see KuR, 1.7.1987, p.11). He added that a redistribution of resources to programmes which were not available to all those living in North Rhine-Westphalia might affect WDR's other programme activities, which are available to all (see KuR 1.7.1987, p.12). It was his view that closing the channels and re-deployment of those involved offered the cheapest and best solution (*Lokalfunk des WDR in Dortmund bleibt*, FR 6.7.1987, p.6).

The *Projektkommission* had recommended that the local television channel continue until 1990 as part of WDR's third television channel, which is broadcast both terrestrially and on cable (see KuR 1.7.1987, p.11). It estimated that a daily 30 to 40-minute programme with one repeat would cost between DM10 and DM11 million a year. The

continuation of the channel was regarded as a chance to experiment, and to test the quality and innovative capability of public service broadcasting (see KuR 1.7.1987, p.11). It also gave WDR the option of becoming involved in local television at a later date (see KuR 1.7.1987, p.11). The commission recommended that Radio Dortmund continue for an unspecified period. It was estimated that this would cost DM6 million a year. Gaps in programme provision could be rectified by using another another WDR radio channel as a framing programme (see KuR 1.7.1987).

In July 1987, against the wishes of *Intendant* Nowottny, the WDR broadcasting council decided to adopt the proposals of the *Projektkommission* (see *Lokalfunk des WDR in Dortmund bleibt*, FR 6.7.1987, p.6). It was decided to continue Radio Dortmund for an unspecified period, and provisionally to incorporate the local television channel into WDR's third television service until the end of 1990 (see Pätzold, 1988, p.2). The *Rundfunkrat*'s decision stated: "Auch für das Fernsehen gelten die Erwartungen an den experimentellen und innovativen Charakter des Programms. Es soll sowohl terrestrisch als auch in Kabelanlagen eingespeist werden" (cit. in Pätzold, 1988, p.2).

It was also decided that the project's access channels would no longer be administered by WDR, although technical assistance would be given at the beginning (see *Lokalfunk des WDR in Dortmund bleibt*, FR 6.7.1987, p.6). Rejecting WDR *Intendant* Nowottny's opposition to the continuation of the local Dortmund experiments, Reinhard Grätz, the chairman of the WDR broadcasting council, pointed out that Nowottny's

alternative proposal to extend WDR's sub-regionalisation policy to the Dortmund area would also have required considerable financial resources (FR 6.7.1987, p.6). He was also concerned that an end to the Dortmund project might release WDR from any further involvement in local broadcasting (see FR 6.7.1987, p.6). The decision to continue Radio Dortmund also effectively put an end to any plans by the local press to become involved in local radio in Dortmund (see FR 6.7.1987).

WDR's right to continue its projects in Dortmund was established in a new WDR broadcasting law (*Bekanntfassung der Neufassung des Gesetzes über den "Westdeutschen Rundfunk Köln" vom 11. Januar 1988*, in MPD II/1988, pp.157-168, Paragraph 56a). Dortmund had not only demonstrated alternatives for local broadcasting, but may also have provided a future model for non-commercial local radio in North-Rhine Westphalia. It has generally been viewed as the most successful project in terms of innovative programming, and the success of local radio and television in Dortmund revealed public demand for programming of this type. The project also provided a sharp contrast to commercial radio and television in other *Länder* (see Teichert, 1987).

### 5.3 Closer to the public - sub-regionalisation in radio

Many of the ARD stations have been pursuing a policy of sub-regionalisation, particularly in radio. This involves splitting existing *Land*-wide networks to enable the insertion of programmes aimed at sub-sections of the audience within one transmission area.

Sub-regionalisation is not entirely new, because BR and SDR started offering sub-regional insertions in the 1960's and early 1970's respectively (see Halefeldt, 1983, p.73). These activities do not appear to have inspired political controversy at the time, because the debate for alternatives was centred on private television, with radio largely excluded from the debate about new technologies and private competition (see Montag, 1978). Nor was the level of interest in radio raised with the introduction of the cable pilot projects, which lacked sufficient reach to provide a viable economic option for private interests.

The situation altered dramatically once new FM frequencies became available in accordance with agreements worked out by the World Administrative Radio Conference in Geneva (see Roigas, 1983, p.553; ARD Jahrbuch, 1985, p.177). In 1984 each *Land* was awarded frequencies to undertake two *Land*-wide networks each (see Röper, 1985, p.522). This removed dependency on cable or satellite, and made commercial radio a more attractive proposition for private interests.

When radio was added to the debate about private broadcasting, some *Länder* tried to stop the expansion of public service broadcasting into sub-regional radio, in order to leave frequencies free for the introduction of commercial radio. In Baden-Württemberg a media law was passed which prevented SDR and SWF from embarking on any further sub-regional activities (see *Landesmediengesetz Baden-Württemberg vom 16. Dezember 1985*, in Bauer, Detjen, Müller-Römer, 17.1.2). SDR was forced to apply to the Constitutional Court for an injunction against

the law so that it could continue to pursue existing plans for sub-regionalisation (see *Urteil des Bundesverfassungsgerichts zum Paragraph 13 Absatz 2 Satz 2 des Landesmediengesetzes Baden-Württemberg vom 3. Januar 1985*, in *ARD Jahrbuch*, 1986, p.419-420).

Attempts to limit public broadcasting's involvement in sub-regional broadcasting found ample support amongst commercial broadcasters, and in particular the press (see *BDZV*, 1985, p.770). The press has always been suspicious of local or sub-regional broadcasting, regarding it as an infringement upon the traditional press role of local news provision (see *Ronneberger*, 1978, p.196; *Lerg*, 1982 p.16). In particular, the print media had expressed fears about loss of advertising revenue, an argument advanced since the 1960s, and rejected on several occasions, most notably by the *Michel-Kommission* in 1967 (see *Montag*, 1978, p.192; *Prodoehl*, 1987, p.231; *Head*, 1988, pp.44-46).

The public broadcasting stations' right to participate in local and regional broadcasting was finally recognised in the Constitutional Court's fifth broadcasting judgement in June 1987, described in Chapter 3. The Court ruled that public broadcasters could not be excluded from local or regional broadcasting, because such exclusion contradicted constitutional demands for diversity of opinion and plurality in broadcasting (in *FKD*, 12.6.1987, pp.1-40). The decision represented a substantial victory for the public broadcasting stations, giving security to existing sub-regional initiatives, and encouragement to future plans.

### 5.3.1 Commercial in-roads into radio

Competing with public broadcasting's radio services at sub-regional level are West Germany's new commercial radio stations, which mainly offer a diet of popular music aimed at young audiences (see Klingler/Walendy, 1986, p.454; Schnibben, 1986, p.87; Wolf Thomas, 1986, p.553; Teichert, 1987, p.276 ). Press involvement is extensive, and is likely to increase as the larger press concerns take on a greater role, especially in the provision of framing programmes for local channels (see Röper, 1985, p.529; Wolf Thomas, 1986, pp.550-551; Teichert, 1987, pp.275-276; Voigt, 1987, pp.3-6). The press have justified their involvement on the grounds that new radio channels will affect their circulation and advertising income (see Teichert, 1987, p.276; see also *Antrag der Radio Hamburg GmbH & Co KG auf Erteilung einer Hörfunklizenz gemäß §16 des Hamburgischen Mediengesetzes vom 3.12.1985*, pp. 331-338, in MP 5/1987, here p.332).

However, distinct differences have emerged in the way in which commercial radio has been approached. Most *Länder* have passed legislation allowing the introduction of commercial radio, but different models have emerged in the north, south, and west of the country, which reflect different aims and concerns.

Schleswig-Holstein and Lower Saxony in the north, only allow *Land*-wide radio stations with *Land*-wide advertising in deference to the local press (see Prodoehl, 1987, p.231; see also *Rundfunkgesetz für das Land Schleswig-Holstein vom 27. November 1984*, Paragraph 5, in MPD



I/1985; *Niedersächsisches Landesrundfunkgesetz in der Fassung vom 10. März 1987*, Paragraph 6, in FKD 27.3.1987, pp.11-20). The two licensed stations, Radio Schleswig-Holstein (RSH) and ifn (Funk und Fernsehen Nordwestdeutschland) in Lower Saxony, include large national and regional press concerns amongst their shareholders (see Teichert, 1987, pp.275-276).

Since their launch RSH, ifn, and a further station, *Radio Hamburg* (RHH), have achieved substantial success in attracting a young audience with a predominantly music-based output (see *Vertreter im Äther*, Wirtschaftswoche, 14.8.1987, p.68; see also Krämer, 1987, p.8; Teichert, 1987, pp.278pp). Unlike their public service counterparts, the new commercial stations appear to avoid large chunks of journalistic output, with ifn actually claiming to avoid "langatmige und ermüdende Wortbeiträge" (cit. in Krämer, 1987, p.9). The emphasis on music with a minimum of information, ignores promises made in the original licence applications (see Teichert, 1987, p.278; *Funk + Fernsehen Nordwest-deutschland & Co KG. Antrag auf Erlaubnis zur Veranstaltung eines Hörfunk-Vollprogramms*, in MP 5/1987, pp.317-340; *Antrag der Radio Hamburg GmbH & Co KG auf Erteilung einer Hörfunklizenz gemäß §16 des Hamburgischen Mediengesetzes vom 3.12.1985*, in MP 5/1987, pp.331-338).

All three of the northern stations will probably reach profitability in the near future (see *Vertreter im Äther*, Wirtschaftswoche 14.8.1987, p.68). The popular profile of the three combined attracted gross advertising revenue of DM75.5 million in 1987 (see

Steinbach, 1988, p.198). This has been achieved at the expense of NDR2, NDR's most popular radio station. NDR's net advertising turnover for radio fell by 8.7% from DM62.4 million in 1986 to DM57 million in 1987 (see Steinbach, 1988, p.203).

Research has also shown that more listeners are tuning in to the private stations. Figures revealed that 1.09 million people listened to the private stations between 6.00 and 18.00, compared to only 856,000 for NDR2 (see *Privatradios erreichen mehr Hörer als NDR2*, FR 29.6.1987; *Wirtschaftswoche* 14.8.1987, p.68). These developments have prompted serious thinking about the future profile of NDR's radio channels (see *NDR-Hörfunk soll mehr an Zielgruppen ausgerichtet werden*, KuR 5.7.1986; Krämer, 1987, p.11; *Wirtschaftswoche* 14.8.1987, p.58). However, attempts to limit journalistic content in favour of more music in the ARD radio stations have prompted concern and scepticism from some observers (see Schnibben, 1986, p.87; *Musik machen und möglichst wenig reden?*, FR 19.2.1988).

In contrast to developments in the north of the country, the southern states of Bavaria and Baden-Württemberg have opted for a system of local and regional radio stations. Bavaria aims to introduce 92 local stations by the end of the 1980s (*Vertreter im Äther*, *Wirtschaftswoche* 14.8.1987, p.68). These will compete with a *Land-wide* network, Bayernradio, involving the major print concerns (see *Drei Medienkonzerne dominieren beim neuen Bayern-Radio*, FR 25.6.1986). Five radio stations are planned for the larger cities of Munich and Nuremberg (see *Wirtschaftswoche* 14.8.1987, p.70). In

Baden-Württemberg, there are plans to introduce four regional networks based in the major cities, and a greater number of local stations (see Voigt, 1987, p.4). As is the case in the North, press and publishing participation is extensive at all levels, and there is a strong possibility that the major print concerns will dominate both *Land*-wide or regional framing programmes and local insertions (see Voigt, 1987, p.4).

Doubts have been raised about the economic viability of the Bavarian and Baden-Württemberg concepts, because of the large number of individual projects, and the lack of advertising in local areas (see *Vertreter im Äther*, Wirtschaftswoche 14.8.1987, p.70; Williams, 1988, pp.32-33). In the north, commercial radio has only to compete with NDR, whose radio advertising is limited to 42 minutes a day. In the south, commercial stations have to compete with the more populist public radio stations of SDR, SWF, and BR (see Klingler/Walendy, 1986, p.454; *Vertreter im Äther*, Wirtschaftswoche 14.8.1987, p.68). These also broadcast much more advertising than their northern colleague, NDR, generally over 80 minutes a day. Some commercial stations in the south are now seeking to solve their problems by cutting costs through shared facilities and programme exchanges (see *Vertreter im Äther*, Wirtschaftswoche 14.8.1987, p.70).

In the Rhineland-Palatinate, a *Land*-wide network, Radio 4, has been licensed (see Klingler/Walendy, 1986, pp.444-466). Radio 4 involved four different private consortia using the same frequency (see *Populäres in allen Schattierungen*, FR 29.4.1986). It has not proved a

successful solution because of squabbles between and within individual consortia, and the lack of profile engendered by the consortial solution (see Klingler/Walendy, 1986, pp.454; *Radio 4 mit Startproblemen*, FR 29.4.1986). A similiar solution has been adopted in West Berlin (see *Lukrativer Lachreiz*, Wirtschaftswoche 14.8.1987, p.58).

In North Rhine-Westphalia a different solution again has been chosen. Here, a law has been passed which aims to establish 50 local radio stations (see *Bekanntmachung der Neufassung des Rundfunkgesetzes für das Land Nordrhein-Westfalen vom 11.1.1988*, in MPD II/1988, pp.137-155; see also *Vertreter im Äther*, Wirtschaftswoche 14.8.1987, p.70). The law seeks to safeguard the economic existence of the local press, but also promote diversity of opinion by preventing the dominance of the local press over local broadcasting content (see Jakob, 1987, p.3; Prodoehl, 1987, p.231). The solution adopted is the so-called *Zwei-Säulen-Modell*. Within this framework, responsibility for programming lies with *Veranstaltergemeinschaften*, made up of various local interests, including the press (see §24-§25, MPD, p.144). The local press is allowed to take up a 75% shareholding in the *Betriebsgesellschaften* (§29, MPD, p.146). These are responsible for providing technical and production facilities to the *Veranstaltergemeinschaft* (§29, MPD, p.146). The economic existence of the press is safeguarded by the fact that the *Betriebsgesellschaft* is responsible for acquiring advertising, but press dominance over programme content is prevented by a clause which states that the *Betriebsgesellschaft* is not allowed to influence the programme policy of the *Veranstaltergemeinschaft* (§29, §25, MPD, p.144, p.146).

The law in North Rhine-Westphalia represents an important attempt to break the press monopoly over local information. However, doubts have been raised about the ability to separate economic and programme interests (see also Lange, 1980, p.82). If a local radio station is to survive economically, the *Veranstaltergemeinschaft* will have to take account of the economic interests of the *Betriebsgesellschaft*, and this could indirectly influence programme policy (see Jakob, 1987, p.4; Prodoehl, 1987, p.233). It also seems likely that the press will reach an agreement with WDR to provide a jointly administered framing programme into which local programmes can be inserted (*Vertreter im Äther*, Wirtschaftswoche 14.8.1987, p.70). This would help to raise the economic viability of local radio.

Apart from North Rhine-Westphalia, it is clear that most commercial radio initiatives in West Germany, whether *Land-wide* or local, are in the main dominated by press interests, and orientated towards popular music for a youth audience. The sub-regional initiatives undertaken by the public stations are substantially different in character and aims.

### 5.3.2 The origins of sub-regionalisation

Some regard sub-regionalisation as an opportunity for public broadcasters to occupy an area of broadcasting ahead of other aspirants (see Janke, 1986, p.5). In fact, sub-regionalisation is not purely a reaction to private competition, but has deeper historical roots. The regional tradition of West German broadcasting goes back

to the birth of broadcasting in the 1920s, when regionalism provided a solution to technical and financial obstacles (see Bausch, 1956, p.17; Lerg, 1980). Decentralised broadcasting was re-established after the years of centralisation under the National Socialists, but was often shaped by the geography of Allied zonal division, rather than traditional historical boundaries (see Schütte, 1975, pp.227pp). For example, NWDR, established by the British, failed to reflect the different regional interests of the areas covered (see Hoffmann, 1975, p.48; Bausch, 1980, p.204). This was one of the reasons why North Rhine-Westphalia established its own station, WDR, in 1954.

The regional interests of the separate *Länder* are reflected in a number of ways. The ARD stations provide a variety of regional services, including the third television channels, regional opt-outs on the ARD network, and three or four regionally-based radio channels each. Some broadcasting laws, like that of BR and NDR, require their local stations to reflect the political and cultural characteristics of their transmission area in programming (see *Gesetz über die Errichtung und die Aufgaben einer Anstalt des öffentlichen Rechts "Der Bayerische Rundfunk"*, Art.4, in Ring, C.IV 1.1.1; *Staatsvertrag über den Norddeutschen Rundfunk vom 20. August 1980*, §5, in Ring, C.IV 1.3.1). However, the pressures of advertising in the regional opt-outs, which have led to regional programming being moved to the third channels and to the transformation of the third television channels into generic channels, may render regional content less significant in future (see Chapter 4). At SWF and NDR, the two multi-*Länd* stations, special provision is made for the broadcasting needs of the different

*Länder* involved. The SWF broadcasting law obliges SWF to maintain studios in both the Rhineland-Palatinate and Baden-Württemberg (see *Staatsvertrag über den Südwestfunk vom 27. August 1951*, §3, in Ring C-IV 1.8.1). The NDR *Staatsvertrag*, passed in 1980, requires NDR to establish broadcasting studios in each of the participant *Länder*, and to produce separate radio and television programmes for each participant *Land* (see *Staatsvertrag über den Norddeutschen Rundfunk vom 20. August 1980*, §2 and §3, in Ring, C.IV, 1.3.1; see also Drengberg/Rust, 1986, p.312).

However, all these activities only cater for whole *Länder*, and ignore the sometimes very different historical, cultural, and political characteristics existing within each individual *Land* (see Ronneberger, 1980, p.200; Halefeldt, 1983, p.72). These differences are underlined by SDR *Intendant*, Hans Bausch, who explained to me the situation existing in the SDR transmission area:

Da gab es regional einen erkennbaren Bedarf. Wenn sie also von Hand des Sendegebiets des SDR nehmen, das ein relativ kleines Sendegebiet ist, sind das ganz verschiedene Menschen, die verschiedene Sprachen sprechen. Im alten Baden, da wird also Rhein-Main-Fränkisch gesprochen. Im alten Württemberg wird Ostfränkisch gesprochen. Im Süden Baden-Württembergs wird Allemannisch gesprochen, wie die Schweizer, und in Südbaden. Das sind völlig verschiedene Historien. (Interview, 29.7.1987)

Sub-regionalisation is clearly something quite different. It is not local broadcasting in the strictest sense. Sub-regionalism refers to programmes aimed at a large homogeneous area within one *Land*, for example North Hesse, with its urban focal point, the city of Kassel, or *Radio Stuttgart* (SDR), which broadcasts programmes to the city and

its immediate surrounds. Local broadcasting, which the public broadcasters profess not to undertake, would cater for smaller units like a small town and its environs (Bausch, Interview, 29.7.1987). Hans Bausch sees practical problems relating to funding and content which militate against the introduction of local broadcasting, when he states: "Sobald es um lokale Sender geht, wäre es ja garnicht mehr zu kontrollieren. . .Wo soll der Stoff herkommen. Soviel passiert in unseren Städtchen nicht" (Interview, 29.7.1987).

In reality there appears to be no clear definition of region, nor a consensus about what constitutes the essence of regional broadcasting (see Ronneberger, 1980, p.196; Teichert, 1981, p.111). Some definitions refer to cultural, ethnic, or linguistic identity. Others refer to the replacement of old local communities by areas of social communication (see Gericke, 1980, p.544; Teichert, 1981). According to Teichert, the conditions necessary for sub-regionalisation include a diverse employment market, a satisfactory standard of living, ample opportunities for leisure, a population of at least 500,000, a focal point, and an area no larger than it would take to cross by car within 90 minutes (Teichert, 1979, p.193).

Sub-regionalisation has chiefly taken place within radio, and aims to improve the social penetration of the medium (see Lerg, 1982, p.14). Frequencies carrying *Land*-wide radio networks are split to allow separate sub-regional insertions (Halefelt, 1983, p.70). There has been little attempt to introduce sub-regionalisation on television, because of the expense involved, although BR offers separate



programmes on its third channel for Franconia and Upper Bavaria (Halefeldt, 1983, p.73). Radio, however, offers a cheaper alternative, because it does not require so much technical support, nor does it require expensive visual material.

What then are the reasons behind public broadcasting's interest in sub-regional radio? One of the most obvious reasons would appear to have been the debate surrounding the cable pilot projects, which allowed private broadcasting and forced public broadcasters to rethink their regional policies as a form of self-defence (see Teichert, 1981, p.112). Second, there is the factor of party-political influence, especially in the case of NDR, where the regional coverage of public broadcasting was criticised (see Teichert, 1981, p.112). However, according to Teichert, the reasons behind sub-regionalisation go much further and are connected with changes in society itself (see Teichert, 1979, 1981).

The origins of the debate for more regionalism in broadcasting are to be found in the early 1970s, when concern was expressed about growing centralisation in society and the increase in power of central government and bureaucracy at the expense of local government (see Ronneberger, 1980, p.189; Teichert, 1979, pp.185-186; Teichert, 1981, p.113). Referring to this concern Halefeldt writes:

Zweifel regten sich, ob die Welt wirklich überschaubarer geworden sei, ob nicht vielmehr die Abhängigkeit des Einzelnen von immer unpersönlicheren, immer unundurchschaubareren Apparaten und Mechanismen gewachsen sei. Apparaten und Mechanismen, die das Leben des Einzelnen bestimmen, ohne daß er noch in der Lage wäre, sie zu beherrschen. (Halefeldt, 1983, p.62)

The diminuation of function in local government left individuals powerless against group politics and leads directly to the second reason for the emergence of regionalism as a topic of debate. The individual no longer felt represented by parties and groups in the region (see Teichert, 1981, p.117).

The debate about centralisation in society left its mark on the media. The press, the traditional local and regional medium, was found to exhibit substantial failings in the provision of local and regional information. This was shown by a lack of critical journalism, reinforced by close links with local institutions on whom the press is dependent for information (Teichert, 1979, p.187; Teichert, 1981, p.118). Similar criticisms were directed at the press. Large stations like WDR and NDR were accused of metropolitanism (Gericke, 1980, p.545). At NDR neglect of regional concerns was one of the reasons which drove Prime Minister Stoltenberg of Schleswig-Holstein to cancel the NDR *Staatsvertrag*, an action which almost resulted in the break-up of the station before a compromise was reached in 1980 with the passage of a new *Staatsvertrag*, which gave greater consideration to regional *Land*-based concerns (see Drengberg/Rust, 1986, p.312).

The debate for greater reflection of regional concerns was encouraged by several other factors. In 1970 the *Michel-Kommission*, which investigated the state of broadcasting in south-west Germany called for more "regionale Nestwärme" as a counterweight to increasing press concentration which was affecting diversity of opinion in local

and regional areas (see Ronneberger, 1980, p.203). Calls for a greater reflection of regional issues were reinforced by instances of regionalisation abroad, including the introduction of BBC local radio in 1967 (see Halefeldt, 1983, p.75). The possibility of cable television further strengthened calls for more regionalisation in broadcasting (see Halefeldt, 1983, p.75).

After consultations with the Bund Deutscher Zeitungsverleger (BDZV), the newspaper publishers' organisation, ARD announced in January 1972 that it would not enter the local and regional domain of the press. It also undertook not to transmit local advertising (see *ARD-Kommunique: Auffassung zur Einführung lokaler Rundfunksendungen*, in MP 1/1972, p.43). According to Halefeldt, this position still holds (1983, p.62). Given that the press are prone to criticise the broadcasters for impinging on their area of activity, this gives rise to an interesting question of reciprocity. If the press decides to enter broadcasting and compete in the public broadcasters' domain, should not the public broadcasters be allowed to compete in sub-regional or local broadcasting (see Prodoehl, 1987, p.230)?

Aware that regional broadcasting constituted an issue of legitimacy, several ARD stations began to implement improvements to their regional coverage by introducing sub-regional radio (see Teichert, 1979, p. 190; Halefeldt, 1983, p.63). Studies by the public broadcasters in the 1970s showed substantial public support for sub-regionalisation (see Gericke, 1980, p.345; Halefeldt, 1983, p.78). Experiments in sub-regional radio were introduced at a number of

trade fairs with considerable success (see Gericke, 1980, p.345). One of the pioneers of these experiments was SDR, whose *Studio Heidelberg/Mannheim*, a six-month experiment in 1975, at the Federal Garden Exhibition in Mannheim, reached 30% of its target audience regularly after only six weeks (Gericke, 1980, p.345).

### 5.3.3 A diversion - failed cooperation with the press

Sub-regional radio has usually come about on the initiative of the individual ARD stations, but SWF and SDR did become involved in a cooperative local radio venture with local newspaper publishers. This was part of the *Monrepos* agreement, encouraged by the Baden-Württemberg government, and agreed between SDR, SWF, ZDF, and local print concerns in 1983 (*Vereinbarung über Versuche mit lokalem Rundfunk in Baden-Württemberg Monrepos-Rahmenvertrag*, MP 5/1983, pp.356-7). The *Monrepos* projects occurred as a result of Baden-Württemberg's decision to withdraw from the cable pilot projects, and institute its own commission in 1979, the *Expertenkommission Neue Medien* (EKM), which drew up an alternative route to the introduction of the new media and private broadcasting in Baden-Württemberg (see *Kabelpilotprojekt Mannheim/Ludwigshafen. Aus der Regierungserklärung des baden-württembergischen Ministerpräsidenten Lothar Späth zum Thema "Chancen und Risiken der neuen Medien"* in MP 12/1979, p.828-834; *Leitsätze des EKM-Schlußberichtes*, in MP 2/1981, pp.124-147). The experiments in local broadcasting engendered by *Monrepos*, were a reflection of the EKM's findings, and were aimed at acquiring experience of local broadcasting.

Under the *Monrepos* agreement, it was decided that local newspaper publishers and the public broadcasters should set up three local broadcasting experiments. SWF and SDR set up joint local radio ventures with the press in Freiburg and Ulm respectively. A planned experiment in local television involving the press and ZDF in Mannheim never got off the ground. All the experiments took place under the supervision of SWF and SDR, with the public broadcasters providing two-thirds of the necessary funding.

Stadtradio Freiburg ran for two years, and ended in October 1986; Stadtradio Ulm began on 1st January 1985 and closed on 30th September 1986 (see Meldung, MP 10/1984). In both cases the local press provided editorial content for sub-regional insertions, about three hours daily, with framing programmes provided by the public broadcasters (see Cyrus, 1984, p.21). Although the experiments proved popular with the public, they did not attract sufficient advertising revenue, and for this reason Stadtradio Freiburg was closed down (see *Stadtradio Freiburg stellte Betrieb ein*, FR 3.10.1986).

According to Cyrus, the trials were never aimed at gaining experience for future legislation, but at establishing press involvement in broadcasting (1984, p.20). Cyrus states:

So macht das Stadtradio mit vorwiegend öffentlich-rechtlichem Geld Propaganda für eine kommerzialisierte Medienzukunft. Das Stadtradio ist nicht mehr als ein Episode, die den Verlegern den Einstieg in die elektronischen Medien erleichtern und dafür werben soll. (Cyrus, 1984, p.23)

Cooperation with the press had not been easy for SDR and SWF, and their involvement was more a result of political pressure than any willingness to cooperate with the press (see *Stadtradio Freiburg kein Kartell-Verstoß*, FR 28.2.1985, p.20). The experiments also detracted from their own individual endeavours at establishing sub-regional broadcasting. Although both projects had achieved some success in programming terms, their destiny was sealed by a new Baden-Württemberg media law, which froze public broadcasting's involvement in local broadcasting as of December 1985. As a result, SDR decided to conclude its Ulm project before the end of the two-year trial period. The experience of cooperation with the press proved that the public broadcasting were more in favour of pursuing their own initiatives in sub-regional radio.

#### 5.3.4 Sub-regionalisation in practice

Not all ARD stations have pursued a policy of sub-regionalisation in radio. SDR and BR are undoubtedly the pioneers of sub-regional radio, but HR is the only station to have completed its sub-regionalisation programme.

The BR transmission area has been split into six regions, including the region of Munich, for the purpose of transmitting sub-regional opt-outs on the second and fourth BR radio networks (Teichert, 1981, p.111). These are broadcast at midday during the week and last approximately an hour. (see Teichert 1979, p.190; Gericke, 1980, p.547; Halefeldt, 1983, p.78, p.66). On Saturdays separate local sports

programming is transmitted for the north and south of the region (see Halefeldt, 1983, p.66). BR is currently the only public station to implement some form of sub-regionalisation in television, offering a separate half hour of programmes for Franconia and for Bavaria and Swabia on its third television channel.

Sub-regionalisation began in earnest at SDR in 1979 with the introduction of the three year experiment, *Kurpfalz-Radio*. This is broadcast on SDR's fourth network, and serves a potential audience of two million listeners in the towns of Mannheim, Ludwigshafen, and Heidelberg (Teichert, 1979, p.191; Gericke, 1980, p.547; Teichert, 1981, p.111). Up to four hours of extended regional programmes are broadcast daily, with local sports programming broadcast on Sundays (see Teichert, 1979, p.191). Broadcasts include an early morning magazine, and sub-regional news bulletins (see Gericke, 1980, p.547; Halefeldt, 1983, p.68). After one year, 17% of those living in the Kurpfalz had listened to the early morning programme at least once (see Gericke, 1980, p.547). A further 39% of listeners listened daily or several times a week (see Gericke, 1980, p.547).

Kurpfalz-Radio has since been joined by four further sub-regional opt-outs. Radio Stuttgart began in March 1981 on SDR's fourth network, offering a diet of sub-regional news and current affairs in the mornings and early evenings to a potential audience of 2.2 million listeners (see Halefeldt, 1983). Schwabenradio, based in Ulm, began broadcasting on the fourth network in September 1984, and serves a population of 650,000 in the Donau-Iller and Ost-Württemberg regions.

Frankenradio, based in Heilbronn, began broadcasting on FM and medium wave on 26th May 1986. Plans to establish Radio Karlsruhe were delayed by the 1985 version of the Baden-Württemberg *Landesmediengesetz*, which froze further expansion by public stations into sub-regional broadcasting to the levels existing on 31st December 1984. This has now been altered because of the Constitutional Court's ruling in June 1987, and SDR is likely to continue with its existing plans.

SDR's neighbour, SWF, was particularly affected by Baden-Württemberg's attempts to prevent expansion into sub-regional radio, because this is an area where it has invested few resources. The ban on further sub-regional activity would have effectively excluded SWF from all sub-regional broadcasting. This would have created a disparity between the north of Baden-Württemberg, served by SDR with sub-regional opt-outs, and the south, served by SWF. Following the Constitutional Court's ruling in June 1987, SWF announced plans to restart sub-regionalisation of its first radio network, and implement separate sub-regional opt-outs for five separate areas (see FR, 24.6.87). Plans for sub-regionalisation had been announced in 1983, but were halted after the passage of the Baden-Württemberg *Landesmediengesetz* in 1985 (see FR 24.6.87). SWF now plans to introduce separate transmissions in the morning for the Baden area, centred around Freiburg, and for the Württemberg area, centered around Tübingen. There are also plans to regionalise early morning transmissions in the Rhineland-Palatinate (see FR, 24.6.87).



The only obstacles facing SWF and SDR are the availability of frequencies. SWF's claims to extra frequencies were rejected by Helmut G. Bauer, the director of the Rhineland-Palatinate Landeszentrale für private Rundfunkveranstalter (LPR), the authority responsible for licensing and supervising private broadcasting in the Rhineland-Palatinate. According to Bauer, the Constitutional Court decision in June 1987 had ruled that public broadcasters only had a right to additional frequencies for the pursuit of local or regional broadcasting if they were unable to split their existing frequencies. In his view, any remaining frequencies in the Rhineland-Palatinate should be awarded to private channels. He added that the cost of sub-regionalisation would lead to SWF claiming more licence-fee funding, and that the Constitutional Court had not opened a "Selbstbedienungs-laden" for public stations (*LPR: Keine zusätzlichen Frequenzen für den SWF*, FR 3.7.1987). SWF Justiziar Jörg Rüggeberg wrote to Bauer, pointing out that SWF had not yet made any demands for further frequency allocations, and that even if they had, the decision had to be made by the Rhineland-Palatinate government, not the LPR. In his opinion, the Constitutional Court had only demanded split frequencies where this was technically feasible, and where it did not affect existing public service channels (*SWF weist Kritik an Regionalisierung zurück*, FR 9.7.1987).

The ARD station in Hesse, HR, is the only station to have completed its sub-regionalisation programme, and provides the clearest idea of the aims of sub-regionalisation. The completion of sub-regionalisation in 1987 was made possible by the introduction of a

fourth radio network, HR4, in October 1986 (Interview, Arnold, 26.8.1987). HR4 consists of three programming components: popular music (evergreens, operetta, middle of the road) aimed at the over-30s age-group, sub-regional insertions, and programmes for immigrant workers (see Arnold, Interview, 26.8.1987; *Die Region spielt eine dominierende Rolle*, FR 1.10.1986, p.26). However, it is the five separate sub-regional insertions which form the basis of the channel's existence. The five regions are:

- North Hesse, centred around Kassel
- East Hesse, centred around Fulda
- South-East Hesse, centred around Wetzlar
- South Hesse centred on Bensheim and Darmstadt
- the Rhine-Main area centred around Frankfurt (Arnold, Interview, 26.8.1987).

The five sub-regions vary in size, averaging 1.2 million listeners each, with the Rhine-Main area forming the biggest sub-section. According to Bernd-Peter Arnold, head of radio sub-regionalisation at HR, any attempts to broadcast to areas with less than 1.2 million listeners would mean embarking upon local broadcasting. In his view, local broadcasting only makes economic sense in the cities, and is one of the reasons why private broadcasters are so keen to introduce radio to these areas (Interview, 26.8.1987). The sub-regional insertions are broadcast for 1½ hours in the morning, ½ hour at midday and 1 hour in the afternoons (Interview, 26.8.1987).

Arnold rejects accusations that the introduction of the fourth radio network was purely a means of occupying frequencies ahead of commercial radio aspirants. Instead, he points out that the sub-regional concept for HR4 had first been worked out in 1978, and that the first sub-regional inserts had been introduced in 1980, long before private programming became a possibility (Interview, 26.8.1987; see also Halefeldt, 1983). He claims that HR had known for 12 years that the public wanted sub-regional programming, but research had also revealed that "regionale Programme nur einen Sinn haben, wenn sie auf Dauer in einem eigenen Programm liegen" (Arnold, Interview, 26.8.1987). The regional opt-outs used to be incorporated across the other three networks, but here they had been "Fremdkörper" (Arnold, Interview, 26.8.1987; see also 4. *HR-Programm ist beschlossene Sache*, FR 22.10.1985). This was the reason behind the introduction of the fourth network as a framing programme. The channel contains no advertising at present, and is therefore not an economic threat to commercial radio, but this policy may change, if the decision is taken to spread HR radio advertising across four channels (Arnold, Interview, 26.8.1987).

HR's efforts at sub-regionalisation give some idea of the relationship between existing regional radio stations and sub-regional radio. Referring to radio generally, Arnold believes that: "eine öffentlich-rechtliche Rundfunkanstalt, die die Grundversorgung sehr sehr ernst nimmt, vier Programme braucht, und zwar vier Programme, die sich untereinander unterscheiden" (Interview 26.8.87). He explains that these four networks can be divided into so-called

*Einschaltprogramme*, which are used by the listener for the reception of specific programmes, which are listened to attentively, and so-called *Begleitprogramme*, which provide background for other activities. The term *Einschaltprogramm* covers HR's first radio network, which concentrates on information and serious entertainment, similar to the first networks of the other ARD stations, and HR2, which concentrates on cultural programming and on serious music. The term *Begleitprogramm* can be applied to HR3, which broadcasts mainly popular music to an audience under 30 years of age, and to HR4 which broadcasts popular music to the over-30 age-group. Both HR3 and HR4 contain news, information, and some cultural programming, but to a lesser extent than either HR1 or HR2. The novelty of HR4 is that it caters for the popular needs of the older age group, which Arnold feels have been neglected in the past (Interview, 26.8.1987). Arnold believes that this constitutes a real alternative to private radio initiatives, which have sought to attract young listeners, although the over-30s as a "finanzkräftige Zielgruppe" would appear to offer greater commercial opportunities in respect of spending power (Arnold, Interview, 26.8.1987). HR4 does not claim to be a generic channel, but a contrast and complement to HR's existing radio networks (see Henning Wicht, *Programmdirektor*, cit. in *Die Region spielt eine dominierende Rolle*, FR 1.10.1986, p.26).

HR4 had been accused of lacking profile, and of pandering to populism, in order to ruin the chances of commercial radio. Arnold denies that this is the case, underlining the status of the sub-regional opt-outs as the central core of the channel. He admits,

however, that more attention has been given to presentation and content, in order to make the channel "formal attraktiver" (Interview, 26.8.1987). He explained to me:

Das ist sicherlich eine vorweggenommene Reaktion auf kommerzielle Anbieter, denn kommerzielle Anbieter werden sich um attraktive Vermittlungsformen bemühen, aber das hat mit den Inhalten nichts zu tun. Das ist rein formal zu sehen. (Interview, 26.8.1987)

HR, BR, SWF, and SDR, are not the only stations to have given more attention to sub-regional broadcasting, but these are the stations which have gone furthest in their stated aims. The essential difference to commercial broadcasting, however, is the emphasis on journalistic output and on the reflection of regional concerns, rather than on popular music aimed at a youth audience.

#### 5.3.5 The future of sub-regionalisation

Sub-regionalisation has undoubtedly made strides within the West German broadcasting environment, but doubts have been raised about whether the public broadcasting stations are structurally suited to fulfil the requirements of sub-regional provision (see Lerg, 1982, p.20). Citing the deficiencies of public broadcasting in this area, Lerg points to the search for identity and integration amongst some local groups which has resulted in the introduction of an alternative local press and, sometimes, of illegal local radio stations (1982, p.14pp, p.17). For the essence of sub-regionalisation lies in content, not organisation, and should ideally lead to better communication by opening up local politics and culture, so allowing individual

participation at a local or sub-regional level (see Teichert, 1981, p.120-21; see also Janke cit. in Halefeldt, 1983, p.63).

Teichert points out that the way public broadcasting is run militates against sub-regionalisation, because its structure tends to reinforce existing power structures, rather than opening up new sources of dialogue. He states;

Geradezu gegenläufig zu dieser Zielsetzung haben sich vornehmlich Hörfunk und Fernsehen zu Anbietern von hochstandisierten, universal orientierten Informationen entwickelt, die die Unüberschaubarkeit der sozialen Umwelt und die Distanz zu den machtvollen Institutionen und Organisationen eher verfestigen (Teichert, 1979, p.185; see also Lerg, 1982, p.21).

According to Teichert, the tendency to hide conflict rather than reveal it, can be explained by the degree of power which *Land* institutions and political parties wield over public broadcasting's supervisory bodies (1979, p.188). This leads to politicisation, because journalists have to satisfy party political and state interests, rather than those of the public (Teichert, 1979, p.189). The centralist and bureaucratic tendencies of public administration are therefore reflected in the media. The "Bürgerferne der Verwaltung" is accompanied by a "Publikumsferne der Medien", with neither satisfying the expectations and needs of the individual, who is dependent on both, but powerless to combat the deficiencies of each (Teichert, 1979, p.189, p.198).

However, in spite of the deficits of public broadcasting, Teichert does believe that the public stations have a central role in the provision of information for the region (Teichert, 1979, p.198; Teichert, 1981, p.121). He points out that public service broadcasting

has the legal and material resources to discuss local and regional problems even against the opposition of organised groups (1979, p.198). In this way it can help publicise and thematicize conflicts, raising awareness, and giving the public a basis to organise their response (Teichert, 1979, p.198). As a result broadcasting comes closer to fulfilling its classical function as a forum and factor in the formation of public opinion.

Janke points to the practical dangers of sub-regionalisation, which may occur if resources are invested at the expense of other public service output, and he criticises the false competition engendered by too much activity on the part of the public broadcasters in this field (1986, p.5). In his view, information provided by such services needs to be of good quality, but this is not automatic, and by splitting personnel, financial and production resources, central structures can be weakened (1986, p.5). He also points out that the time audiences spend using the media cannot be increased at will (1986, p.5). He argues that the public broadcasters would be better advised to concentrate their resources on existing output, rather than diverting audiences and resources to new areas. Janke also criticises the programme policy of sub-regionalisation, with its reliance on magazine formats, which lack originality, and doubts whether there is sufficient material of local interest to fill these opt-outs without eventual recourse to pop music (1986, pp.5-6).

However, there are advantages of such local provision. Local stations can serve as sources of information for the network as a

whole, thus bringing important local concerns to the attention of a broader audience. Local and regional politics can be examined more closely, and public service broadcasting can use the opportunity further to define its identity as the "Sender unseres Landes" (see Janke, 1986, p.5-6; see also Teichert, 1979, p.196). Public broadcasting's activity in this area can also help to extend access to non-organised groups, and help break the monopoly of the local press (Teichert, 1979, pp.196-197).

As can be seen, West German broadcasting is already highly regionalised, both sub-regionally and in the traditional area of federalism. However, although the ARD stations have devoted a considerable amount of energy and resources to regional concerns, they are, as with most of their expansionary policies, limited to how much they can do. The emergence of the new media and competition from private channels are a challenge, but the ARD stations' response is hindered if they are denied sufficient licence fee increases and if their applications for new frequencies are disputed in the interests of others (Arnold, Interview, 26.8.1987; see also Halefeldt, 1983, p.79). In addition to the financial and frequency restraints on sub-regionalisation, there are also restraints connected with content and the lack of sufficient material of interest to fill a sub-regional channel (Arnold, Interview, 26.8.1987).



#### 5.4 Review

The expansionary policies of ARD and ZDF are not only confined to satellite television, cable, and sub-regional radio. They also include deliberations about the introduction of breakfast television, the expansion of transmission time, and national distribution of the third television channels. The reasons for expansion are varied. In the case of satellite, expansion is clearly connected to the desire not to be left behind in new technological developments, which might render public broadcasting less competitive than private broadcasting. Although initiatives in satellite began before the introduction of private broadcasting, it was felt necessary to embark on this route in anticipation of private competition. Sub-regional broadcasting is somewhat different. Here, the initial impetus came from perceived deficits in local communication. However, more recently the impact of commercial radio has also played a role, but sub-regional radio remains substantially different in nature to its commercial counterparts. Cable, as shown by the experiments in Dortmund, is more difficult to gauge. Here, public service interest has been less evident, and high costs and low audiences have made the public service broadcaster wary of too much involvement.

Whether expansion actually helps the case for public service broadcasting is disputable. Expansion quickly leads to accusations of empire-building, and it may in the long term be detrimental to ARD and ZDF's core activities in television and radio if resources are stretched, and if their financial situation worsens because of

inadequate licence fee increases or falling advertising revenue. Justification for expansion ultimately rests with ARD and ZDF's continued ability to offer something which is different from their commercial competitors, and something which fills gaps in existing programme provision. The cultural emphasis of Eins Plus and 3SAT, the concentration on sub-regional concerns in radio, and the local initiatives of the Dortmund cable pilot project, show that the public broadcasters are willing to provide programme content which is different. It now rests with the *Länder* to recognise this fact and to secure the necessary funding so that these activities can continue and develop.

## CHAPTER SIX

### THE ACHILLES HEEL: THE FUNDING OF PUBLIC SERVICE BROADCASTING IN WEST GERMANY

Broadcasting finance is not purely a matter of funding and economics. It is in fact closely entwined with the structures of broadcasting, because different types of funding affect the extent of broadcasting's independence, programme content, future development, and society's expectations of broadcasting. The methods chosen to fund broadcasting organisations are also a reflection of social structures and the priorities which societies set themselves, and in this sense funding is an essentially political issue. Bearing this in mind, I have concentrated on the nature of broadcasting finance rather than on the economics of broadcasting. In particular, I have concentrated on the significance of funding structures for ARD and ZDF in a dual system of private and public service broadcasting.

The structural significance of funding for broadcasting in West Germany constitutes an essential component of the concept of *Grundversorgung* by public service broadcasting as first defined in the Constitutional Court's fourth broadcasting judgement in November 1986 (*Urteil des Bundesverfassungsgerichts vom 4. November 1986 (Viertes Fernsehurteil)*, in FKD 7.11.1986, pp.1-42). The Court ruled that if public service broadcasting was to be in a position to carry out *Grundversorgung*, and so contribute to the formation of public opinion, its funding had to be guaranteed in law (p.20; see also A. Schmitz,

1986, p.457). It concluded that the system of public service broadcasting and licence-fee funding was legitimated by the fulfilment of this classical function, which public broadcasters are capable of satisfying, because they are not so dependent on advertising revenue as private broadcasters (pp.19-20). The latter are forced to rely on popular, less balanced programming to attract large audiences (pp.18-20). The Court's recognition of the economic prerogatives of private broadcasting resulted in the stipulation of less stringent requirements for private broadcasting channels in respect of breadth of programming (p.20).

In its fifth judgement in March 1987, the Court did not specify any particular method of funding for public service broadcasting, (although it ruled that a ban on advertising for local broadcasting and a ban on pay-TV was constitutional in the economic interests of private broadcasting), but it pointed out that even if ARD and ZDF undertook services which were not part of *Grundversorgung*, the *Länder* still had to ensure that adequate funding was secured to enable the public stations to compete with private broadcasting in the process of opinion formation (*Beschluß des Ersten Senats des Bundesverfassungsgerichts über die Verfassungsbeschwerden des SDR und des SWF gegen das Landesmediengesetz Baden-Württemberg von 24. März 1987*, in FKD 12.6.1987, pp.1-40, p.23, p.28; see also Steimer, 1985, p.14). In doing this, the Court reaffirmed the principle that constitutional demands connected with broadcasting's contribution to political culture have priority over commercial considerations (p.25; see also Lange, 1985, p.185, p.188).

In constitutional terms, the funding of ARD and ZDF is secure and linked to their continued adherence to the public service tradition. However, ARD and ZDF wish to develop their activities still further, as shown by their attempts to reform existing TV output and introduce new services, not only as a natural evolution of their activities, but also in response to private competition (see Chapters 4 & 5). The funding of new activities, even if they are not part of *Grundversorgung*, has also been guaranteed by the Constitutional Court. However, the extent to which ARD and ZDF can evolve and extend their activities depends ultimately on political recognition of their financial requirements, requirements which are notoriously difficult to assess either in quantitative or qualitative terms. Andreas Schardt, *Justiziar* at SAT 1 sees political opposition as the main barrier to further expansion by the public service broadcasters and he told me::

Ich warte wirklich auf den Tag, wo wir die erste Alimentationsklage eines öffentlich-rechtlichen Senders vor uns haben, der dann nur darzulegen braucht, daß sein zuständiges Aufsichtsgremium der Installation eines neues, was weiß ich, Satelliten-Hörfunkprogramms oder einer neuen lokalen, regionalen Sendekette zugestimmt hat. (Interview, 5.8.1987)

Political involvement in the funding procedures of public broadcasting is already showing increased signs of politicisation, because the CDU/CSU is keen to promote the interests of private broadcasting. This party-political threat to funding comes in addition to the threefold commercial threat to ARD and ZDF of lower audiences, less advertising revenue, and less public acceptance of the licence fee because of the introduction of "free", advertising-supported, commercial broadcasting stations.

It will be shown that the problems which afflict ARD and ZDF in financial matters have not been alleviated either by Constitutional Court decisions or by the inter-*Land* agreement on the reorganisation of broadcasting. Existing problems are too deeply rooted, and would require an almost total rethink of the existing model of broadcasting finance to offer any long-term solution. In this sense, the method of funding public service broadcasting in West Germany, as in many other European countries, continues to be its Achilles heel.

#### 6.1 Methods of broadcasting finance

Broadcasting, in common with other service institutions, does not normally finance itself directly by marketing its products and services. It is usually funded by specially devised methods, all of which have some disadvantages (see Smith, 1972, p.43; Rühl, 1984, p.589; Schmitz, 1986, p.457). According to Anthony Smith:

Television is financed, not paid for. Each method of finance carries with it certain risks - moral, practical, fiscal, political - some of which are worth taking in some societies, but not in others. It all depends on the nature and state and stability of the society concerned. No method of funding is sacred, let alone good - all are worse. (1972, p.43)

State subsidies have to be discounted in the case of West Germany, because the Basic Law demands that broadcasting be independent of the state (see Rühl, 1984, p.589; Rombach, 1985, p.54; Steimer, 1985, p.15; Schmitz, 1986, p.457). In spite of the lack of similar constitutional barriers, successive British governments have rejected government

grants-in-aid for similar reasons relating to broadcasting's independence (see Smith, 1972, p.42).

The licence fee, a form of tax levied on owners of television and radio receivers, is the traditional form of funding public service broadcasting. It may constitute the sole source of finance (as is the case with the BBC), but more usually it is combined with a secondary source of income, advertising revenues from the sale of airtime to advertisers for the promotion of goods and services. This is the case in West Germany.

More recently, attention has been focused on more direct ways of funding broadcasting, in the form of pay or subscription television. According to this method, the viewer/consumer pays directly for the channel or programme he/she intends to view. This is one of the alternatives being considered in Britain for the funding of the BBC, and already forms the financial basis of several new private programme initiatives, usually feature-film channels like Sky Movies in the United Kingdom, and Teleclub in West Germany. Another option involves the funding of broadcasting by sponsorship from individuals, commercial enterprises, and institutions, but this is usually only a supplementary form of funding (see Tempest, 1986, p.148). The sale of TV programmes, publishing activities, and merchandising (the sale of records, clothes, etc.) are normally peripheral activities.

Unlike Britain, which until recently has stuck to the principle of separate sources of finance for broadcasting channels in order to

enhance competition of content rather than competition for revenue, (see Smith, 1972, p.44), both ARD and ZDF are funded by a mixture of licence fee revenue and advertising income. In 1987, the ARD stations had a total income of close to DM5.1bn. About 70% of this came from licence fee revenues, and 18% from advertising. A further 12% was earned from other sources, including programme sales and co-production finance (ARD Jahrbuch, 1988, p.127, p.308). At ZDF, total income came close to DM1.6bn in 1987. About 55% of this came from the licence fee, and 39% from advertising, with 6% from other sources (ZDF Jahrbuch, 1988, p.205).

Competition for revenue is generally seen as bad for programming diversity, because broadcasters tend to screen the same type of programmes at the same times in order to maximise audiences and so justify support from their financiers (see Broadcasting Research Unit, 1985, p.15). When ARD and ZDF were the only broadcasters in West Germany, this problem was partly alleviated by coordinating their programme schedules in order to enhance pluralism of content (see *ARD/ZDF-Programmschema*, ARD Jahrbuch, 1988, pp.386-7). Now that advertising-funded private broadcasting has been introduced, programme diversity is under threat, because private broadcasters are likely to schedule competitively, and ARD and ZDF, in spite of obligations concerning balanced output, are clearly embarking on a more populist course of action against both private broadcasters and against each other (see Chapter 4).



## 6.2 The licence fee

In West Germany, the licence fee is divided into a basic fee which goes entirely to the ARD stations, and a television supplement. Thirty per cent of the television supplement is awarded to ZDF. There is no extra charge for colour television, and the basic fee must still be paid even if a television only is owned. The fee bears no relationship to the amount of programmes viewed or heard, and neither fee is used specifically for TV or radio (see Rühl, 1984, pp.592-593; Schmitz, 1986, p.458). The fee is in fact contributory in nature and meant as a device for funding the institution of broadcasting as a whole, rather than as a payment for specific services, in this case programmes (see *Urteil des Bundesverfassungsgerichts vom 27.7.1971*, in MP 7-8, 1971, p.220). This view is supported by the way one uniform licence fee is used to cross-subsidize ZDF, the smaller ARD stations, and the supply of broadcasting to less heavily populated areas which could not afford broadcasting services on their licence fee payments alone (see Rühl, 1984, p.593).

Since January 1988, the monthly licence fee has stood at DM5.16 for the basic fee and DM11.44 for the TV supplement. This last increase occurred as a result of the inter-Land agreement on the reorganisation of broadcasting in March 1987, which awarded 2% of both licence fees to fund private broadcasting's independent supervisory bodies, access channels, and the extension of terrestrial frequencies for the reception of private broadcasting (*Staatsvertrag zur Neuordnung des*

*Rundfunkwesens*, in KuR 25.4.1987, p.20). A further increase was due to be announced in January 1989.

ARD and ZDF are jointly responsible for the collection of the licence fee, and this is undertaken through a licence fee collection centre, the *Gebühreneinzugszentrale* (GEZ), based in Cologne (see *Satzung der Rundfunkanstalten über das Verfahren zur Leistung von Rundfunkgebühren zum 1.1.1976*, ARD Jahrbuch, 1976, pp.278-9). Prior to 1976, collection was undertaken by the Bundespost, but this proved unsatisfactory, and in an effort to increase efficiency and cut costs, the stations decided to undertake collection themselves (see Wagner, 1974, p.303; Lehmann, 1977, p.73; Bausch, 1980, pp.680-682).

Fig. 6.1

LICENCE FEE INCREASES SINCE 1970

Duration	Basic fee DM	TV Supplement DM
1924-69	2.00	5.00
1970-73	2.50	6.00
1974-78	3.00	7.50
1979-July 83	3.80	9.20
1.7.1983.	5.05	11.20
1.1.1988	5.16	11.44

The level of the licence fee is set down in inter-*Land* agreements, ratified by the *Länder* parliaments. The last proper increase, apart from the 2% increase brought about by the inter-*Land* agreement on the reorganisation of broadcasting in 1987, occurred in 1983 (*Staats-*

*vertrag der Länder über die Höhe der Rundfunkgebühren und zur Änderung des Staatsvertrags über einen Finanzausgleich zwischen den Rundfunkanstalten*, 6.7.1982 and 26.10.1982, ARD Jahrbuch, 1983, pp.399-400). The conditions of payment and a definition of broadcasting removing any ambiguity over what is being paid, are set down in a further inter-Land agreement which was signed in 1974 (*Staatsvertrag der Länder über die Regelung des Rundfunkgebührenwesens*, 5.12.1974, ARD Jahrbuch, 1975, pp.340pp). The first ever licence fee increase occurred in 1970 (*Staatsvertrag der Länder über die Höhe der Rundfunkgebühr*, in ARD Jahrbuch, 1970, p.302). Prior to this, the basic fee had been held at DM2 since 1924, but there have since been six increases (see Figure 6.1).

The reason why it took so long to achieve the first licence fee increase was partly due to the unpopularity of such a measure, and partly due to uncertainty about the *Länder's* legal right to raise the licence fee (see Williams, 1976, p.53; Bausch, 1980, p.662). This uncertainty arose, because the Bundespost continued to interpret the licence fee as an administrative fee paid for the right to own and run a broadcasting receiver according to a law passed in 1928, the *Fernmeldeanlagen-gesetz* (see Scharf, 1969, p.51; Rühl, 1984, p.591), in spite of the Constitutional Court's 1961 ruling about *Länder* responsibility for broadcasting. However, by 1970 it was clear that a rise had become necessary because of increased expenditure on technology, and the introduction of new or extended broadcasting services (see Maier, 1971, p.22). Legal clarity on this issue had been reached on 15th March 1968, when the Federal Administrative Court

ruled that the *Länder* were responsible for fixing the licence fee (*Urteil des Bundesverwaltungsgerichts vom 15.3.1968*, in *ARD Jahrbuch*, 1969, pp.319-21; see also Bausch, 1980, pp.671-672). The Court ruled that the licence fee was not a payment for the right to own a receiving set, but a fee paid to the broadcasting stations for whose sole use it is intended (see also Ibsen, 1958, p.79; Steimer, 1985, p.26)). Strengthened by this decision, the *Länder* ratified the first agreement regulating the mechanism by which the licence fee was to be raised in October 1968 (*Staatsvertrag der Länder über die Regelung des Rundfunkgebührenwesens vom 31.10.1968*, *ARD Jahrbuch*, 1970, pp.299-301).

The legal status of the licence fee was further clarified in the Constitutional Court's 1971 judgement (*Urteil des Bundesverfassungsgerichts vom 27.7.1971 - Mehrwertsteuerurteil*, in *MP 7-8/1971*, pp.207-235). The Court ruled that broadcasting was part of the public sphere, and that the broadcasting stations undertook an integrative function for the state as a whole by contributing to the process of opinion formation (p.207). As such, their activities were not commercial, but social, and by extension the licence fee was not a price paid for programmes, but a means of funding the institution of broadcasting (p.207, p.220).

For many years, licence fee revenue grew as more households acquired television sets and radios. However, levels of set ownership have now reached saturation level, and as a result more frequent increases have become necessary (see Maier, 1986, p.37). Slower

growth in the licence fee has been accompanied by ever increasing costs brought about by the tendency of ARD and ZDF to extend their operations in terms of technology, personnel, new channels, and transmission time (see Maier, 1971, p.25; Flottau, 1978, p.74; Maier, 1986, pp.35-42). Hans Bausch, SDR *Intendant*, told me:

Programm entsteht nur in dem Maße indem Geld da ist. . Die größten Kosten entstehen sicherlich für die Fernsehinfrastruktur, für Leitungen und Satelliten. . das kostet ein Heidengeld. (29.7.1987)

Personnel costs alone accounted for about 40% of ARD's total expenditure of DM5.6bn in 1987, and 25% of ZDF's total expenditure of DM1.5bn (ARD *Jahrbuch*, 1988, p.282; ZDF, 1988, p.34). ZDF has lower personnel costs because it is centralised (as opposed to ARD's federal structure), concentrates on TV only, and because it commissions a greater proportion of its programming from independent producers. In addition to the increasing costs of in-house production, the costs of acquired programmes, in particular feature films, and of sports rights have also risen, fuelled by the appearance of private television channels (see Maier, 1986, p.51; Chapter 4).

The purchasing power of the licence fee is reduced not only by saturation in television and radio ownership, expansion in broadcasting, and broadcasting inflation (necessitating more frequent licence fee increases). It is also diminished by certain obligations imposed on ARD and ZDF in return for public support from the licence fee. Rühl believes that these conditions have turned the licence fee into a "ein wohlfahrtstaatlicher Preis" (1984, p.590; Fünfgeld, 1985, p.83). Some of these conditions are compatible with the obligations of public service broadcasting, and aim to enhance social equality and

the integrational function of broadcasting. They include the provision of regional programmes, minority output, a broad range of programming across different genres, and universal geographic coverage (see Maier, 1986, p.32). However, minority and cultural programming, news, and sport are expensive because they have to be produced in-house and cannot easily be bought "off-the-shelf" (see Haselmayr, 1982, p.26; Fünfgeld, 1985, p.87). Geographic universality has cost implications too, because transmitters have to be erected in outlying areas which are not always economically viable in terms of the number of households reached (see Broadcasting Research Unit, 1985, p.1; Maier, 1986, p.32). Yet, eventhough these obligations incur more expense for the broadcasters, they are accepted as part of the public service tradition. Other obligations derived from licence fee funding, such as funding licence fee exemptions and experimental cable pilot projects (described later in this section), are more controversial.

The regional presence of the ARD stations also has cost implications, as it is far more expensive to maintain nine stations than a centralised organisation like ZDF (see Maier, 1986, p.38). To counter this disadvantage the ARD stations cooperate in the provision of the national television network, *Erstes Deutsches Fernsehen*. Cooperation also takes the form of a financial subsidy from the larger stations to the three smallest stations (SFB, RB, and SR), which are unable to support themselves from licence fee revenues and advertising alone. Financial equalisation is regulated by an agreement between the ARD stations (*ARD-Vereinbarung Finanzausgleich vom 29. November 1983*, in *ARD Jahrbuch*, 1984, pp.386-7), but it has been made legally

binding by an inter-Land agreement (*Staatsvertrag der Länder über einen Finanzausgleich zwischen den Rundfunkanstalten*, 20.9.1973, in *ARD Jahrbuch*, 1974, pp.317-318; *Änderung des Staatsvertrags über einen Finanzausgleich zwischen den Rundfunkanstalten*, in *ARD Jahrbuch*, 1983, pp.399-400). Although equalisation is a burden in financial terms it has undoubtedly contributed to the regional and cultural diversity of West German broadcasting, and helped to maintain the principle of a uniform licence fee throughout the country (see Bausch, 1980, pp.715pp; Seidel, 1985, p.432). Under the present ARD equalisation agreement the three smallest stations receive DM148.5m. A contribution of DM52.1m is also made to the external services radio network, Deutschlandfunk (DLF) (*Staatsvertrag über die Höhe der Rundfunkgebühr vom 6.Juli/26.Oktober 1982*, in *ARD Jahrbuch*, 1983, p.399).

In addition to the official form of equalisation, there is also an indirect form of cross-subsidisation because the larger stations shoulder a greater proportion of television output both in terms of amount and value (see Seidel, 1985, p.435). For example, WDR contributes not only 25% of the output of the national TV network, but also 35% of direct programming costs (see Seidel, 1985, p.433; *Verwaltungsvereinbarung der Landesrundfunkanstalten über die Zusammenarbeit auf dem Gebiet des Fernsehens (Fernsehvertrag) vom 27. März 1953, in der Fassung vom 2.Juli 1964*, in Ring, 1980, C-V, p. 2). The larger ARD stations also take on programme responsibilities for the whole ARD network; WDR is responsible for network sports coverage, and network news production is based at NDR.

The organisational features detailed above seem compatible with ARD and ZDF's status as public service broadcasters, and the price for their maintenance by licence-fee funding. However, other limitations on the way the licence fee is used appear to be purely a means of burdening public service stations with obligations which should ideally rest with the state or other agencies.

Licence-fee exemptions on social grounds for the disabled and those on low incomes are a major and growing drain on ARD and ZDF's resources, because the costs of exemption are borne entirely by ARD and ZDF (see *Verordnung über die Gebührenbefreiung vom 5.5.1980*, in ARD Jahrbuch, 1981; see also Scharf, 1970, p.298; Wittig-Terhardt, 1976, p.277; Maier, 1971, p.23). Such exemptions are compatible with the social and political role of broadcasting, which deems that all should have adequate access to an important source of information and education, but some commentators believe that the costs of exemption should rest with the state rather than with the broadcasting stations, and indirectly with other licence-fee payers (see Rühl, 1984, pp.599-600; Maier, 1986, p.45). This also the view held by Hans Bausch, SDR *Intendant*, but he doubts whether the situation will change because of party-political opposition. He told me:

Das ist natürlich eine Maßnahme der Sozialpolitik. Wäre es ganz korrekt, müßten Gebühreneinnahmen, die der Rundfunk dadurch verliert, vom Staat ersetzt werden. . . Sie (the politicians) sagen "Machen wir nicht, weil wir keine Mehrheit im Parlament dafür kriegen". (Interview, 29.7.1987)

Since 1970 the number of exemptions for basic licence-fee holders and TV supplement holders has risen from 2.3% and 0.5% to 8.2% and



7.5% respectively (Maier, 1971, p.23; ARD Jahrbuch, 1988, p.306). In 1987, ARD lost DM129.6m in basic licence revenue and DM162.5m from the television supplement. ZDF lost DM69.7m in 1987, bringing a total loss of DM361.8m from total ARD/ZDF licence fee income of DM4.4bn.

An even more controversial use of the licence fee was the *Länder* decision in 1979 to use it to subsidise four experimental cable pilot projects (see *Beschluß der Ministerpräsidenten der Länder betr. Gemeinschaftliche Finanzierung der Pilotprojekte "Kabelfernsehen" durch die Länder*, in Bauer, Detjen, Müller-Römer, 18.1.2). This decision was widely seen as a way of subsidising the introduction of private broadcasting, because it was decided to add DM0.20 to each licence fee to fund the technical and investment costs of the experiments. Each project was awarded DM35m over three years (*Staatsvertrag zur Änderung des Staatsvertrags über einen Finanzausgleich zwischen den Rundfunkanstalten vom 6.Juli/26.Oktober 1982*, in ARD Jahrbuch, pp.399-400). Doubts about the legality of the subsidy have been rebutted by the courts. The Berlin Administrative Court rejected a case brought by 11 Berliners who had argued that they should not be forced to pay the subsidy because they did not use cable. The Court ruled that the cable pilot project subsidy was not an additional fee, but a sum for experiments which benefited all licence-fee payers in the long term (see *Erneut Klage abgelehnt gegen "Kabelgroschen"*, FR 3.11.1986, p.18; *Der Kabelgroschen muß vorerst bezahlt werden*, FR 10.7.1987, p.1).

Once the pilot projects were concluded, the *Länder* prime ministers decided to continue the idea of diverting some of the licence fee to

other broadcasting initiatives. As mentioned previously, the inter-Land agreement on the reorganisation of broadcasting demands that 2% of the licence fee be used to fund private broadcasting's regional supervisory authorities, access channels, and improvements to terrestrial reception for private broadcasting channels (*Staatsvertrag zur Neuordnung des Rundfunkwesens*, in KuR 24.4.1987, p.26). Although the licence fee will not be used to subsidise private television and radio directly, the decision to use it to improve the terrestrial reception of private broadcasting constitutes an indirect subsidy, because it will give private broadcasters a greater potential audience, so making them more attractive to advertisers. This use of the licence fee is regarded by some as a "Zweckentfremdung" or abuse of the licence fee's status as a means of funding the institution of public service broadcasting (see Berg, 1985, p.10; see also Schmidt, 1986, pp.162-172). It would also appear to conflict with the idea that private broadcasting should be financially self-sufficient and not rely on state funding.

It is therefore clear that on the whole the licence fee is a privileged source of funding awarded to public service broadcasting in return for the fulfilment of its constitutional obligations. Funding by the licence fee brings with it certain limitations which affect expenditure. Some of these are commensurate with the idea of public service (for example pluralistic programming, universality, and the maintenance of federalism), and some are less justifiable (primarily the use of the licence fee to improve the terrestrial reach of private broadcasting).

#### 6.2.1 The politicisation of the licence fee

The licence fee was a central issue in the debate about the extent of a guarantee of existence and further development for public service broadcasting in negotiations for an inter-*Land* agreement on the reorganisation of broadcasting. It was important for ARD and ZDF to clarify the issue of funding, because their ability to compete with commercial broadcasters and institute reforms and expansion depends on sufficient funding. During the course of these negotiations, it was obvious that the politics of broadcasting finance are more important in determining the future of ARD and ZDF than the actual economics of broadcasting finance.

The inter-*Land* agreement on the reorganisation of broadcasting reaffirmed the licence fee as the main source of income for ARD and ZDF (*Staatsvertrag zur Neuordnung des Rundfunkwesens*, in KuR 24.4.1987, pp.18-26). It stated that the procedure for setting the licence fee should proceed with a high degree of objectivity, taking into account existing and new channels, participation in the new media, inflation, and developments in advertising (p.20).

In practice, the procedure for determining licence-fee increases, involving parliaments and *Land* government representatives, is more complex, and continues to be characterised by a high degree of politicisation. The *Land* parliaments and governments have no direct control over how the licence fee is spent by the broadcasters. However, when the broadcasters ask for a licence fee increase, they

become more politically vulnerable and less anxious to offend their political paymasters. As Hans Bausch, SDR *Intendant*, rightly points out: "Die Unabhängigkeit der Rundfunkanstalten endet letztlich genau an dem Punkt, an dem es um die materielle Existenz geht" (Bausch, 1983, p.228). This recognition of public service broadcasting's dependence on the state in respect of the licence fee is not confined to West German experience alone, as experience of BBC funding in the United Kingdom shows (see Hood, 1972, pp.410-411; Smith, 1972, p.42).

Eventhough the licence fee renders public broadcasters more politically vulnerable and anxious not to annoy politicians when they need a licence fee increase, the licence fee has traditionally been viewed as a pillar in the maintenance of public service broadcasting's editorial and institutional independence of the state and governments, as well as of party-political and commercial interests (see Scharf, 1969, p.50; Seidel, 1985, pp.429-30). The level of the fee is fixed by the *Länder*, but the broadcasters are free to spend licence-fee income as they see fit, subject to the obligations imposed on them by the public service tradition (see Seidel, 1985, p.430). Autonomy over expenditure also constitutes the cornerstone of public service broadcasting's independence, because it allows broadcasters to pursue a policy of diverse programming in the interests of all, including minorities, rather than just pursuing mass audiences with mass-appeal programming to satisfy commercial interests (see Lange, 1985, p.185; Seidel, 1985, p.430; Maier, 1986, p.32). Programming, not profit, is the central tenet of public service broadcasting, and this is bolstered by licence-fee funding.

The argument about the link between diverse programming and licence-fee funding loses some of its force once competitive commercial broadcasting is introduced. For example, the BBC was forced to adopt a more populist, conformist profile in the 1960s because of competition from ITV (see Hood, 1972, p.411). This pursuit of ratings came about because the BBC felt that it had to maintain a significant share of the audience, in order to convince the Government that licence fee funding was justified (see Hood, 1972, p.411). In West Germany, the battle for audiences with commercial stations has only just begun. Yet there are already signs that ARD and ZDF are adopting a more populist programming philosophy in order to maintain audience share and so convince their political paymasters of the legitimacy of licence-fee funding and the need to increase it at regular intervals (see Chapter 5). However, the most worrying aspect of licence fee funding is the way it is set and the political infringements which the procedure encourages. These infringements are difficult to reconcile with the institutional and editorial autonomy claimed by public service broadcasting.

In West Germany, the procedure for determining the level of the licence fee is highly politicised and complex, because it involves discussions by all the *Land* prime ministers, followed by the unanimous consent of eleven *Land* parliaments with different parliamentary majorities (see Scharf, 1969, p.51; Schmitz, 1986, p.461). Neither ARD nor ZDF play any direct role in setting the level of the licence fee. They submit their financial requirements, and these are examined by the *Land* chancellories, who are advised by an independent specialist

standing commission, the KEF (Kommission zur Ermittlung des Finanzbedarf der Rundfunkanstalten). Once the *Länder* prime ministers have negotiated the timing and level of the licence-fee increase, and the issue of subsidies for the smaller ARD stations has been settled with ARD, the resulting inter-*Land* agreement is sent to the *Land* parliaments for ratification. Only then does the new licence-fee agreement come into force (see Bausch, 1980, p.663; Schmitz, 1986, p.459pp). In theory the *Land* parliaments are supposed to make the final decision, but in practice it is reached behind closed doors by the prime ministers and their advisors (see Bausch, 1980, p.664; Bühringer, 1985, p.1; Rombach, 1985, p.62). On a practical level, the present procedure is time-consuming, and involves too many different actors. The 1982 licence-fee agreement alone took 20 months to negotiate, adding to ARD and ZDF's financial insecurity (see Seidel 1985, p.431; Bühringer, 1985).

The need for unanimity amongst the *Land* parliaments heightens the fragility of the procedure. Until now a compromise solution has always been found, but a rejection of the licence-fee agreement by just one parliament could throw the whole process into turmoil and endanger the principle of a uniform licence fee with implications for the equalisation agreement, the funding of ZDF, and indeed for ARD itself (see Bausch 1980, pp.663-664; Bühringer, 1985, p.3; Hilf, 1985, p.35; Schardt, Interview, 11.8.1987). The threat of a split licence fee has already been used as a political weapon against ARD and ZDF. The CDU/CSU *Länder* used it in December 1986 as a way of pressurising the SPD *Länder* into signing the inter-*Land* agreement on the reorganisation

of broadcasting (*Gebührenstaatsvertrag: Kündigungsplan der Unionsländer - Ergebnis-protokoll einer Besprechung der Staats- und Senatskanzleichefs*, KuR 10.12.1986, p.19). The SPD Länder countered by announcing their intention of concluding separate licence-fee and equalisation agreements if the CDU/CSU carried out their threat (*A-Länder: separater Finanzausgleich gegen Drohung mit "Gebührenknüppel"*, KuR 13.12.1986, p.8; see also Chapter 3).

The level of the licence fee is decided according to political rather than objective criteria, which are themselves not adequately defined (see Bühringer, 1985, p.2; Seidel, 1985, p.431; Schmitz, 1986, pp.461-462). The licence fee, according to Hans Bausch, is "der schwächste Punkt" and always requires political and economic concessions. The need for compromise amongst the *Länder* reinforces demands for conditions attached to licence-fee awards which infringe ARD and ZDF's institutional autonomy, and are not always directly related to the funding of broadcasting (see *Synopse zur Diskussion um die Rundfunkgebühren und den Finanzausgleich der Rund-funkanstalten in den Landtagen*, MP 11/1983, pp.794-801; Bühringer, 1985, p.3; Schmitz, 1986, p.461). Conditions attached to licence fee awards in the past have included improvements to regional and educational broadcasting, and cooperation in the provision of the third television channels (see Maier, 1971, pp.23-24; Bausch, 1980, p.698; Rühl, 1984, pp.598pp).

Perhaps more serious than the conditions attached to licence-fee increases are the accusations of attempts by governments to force good behaviour from the broadcasters on the occasion of a licence-fee

increase (see Seidel, 1985, p.430). Bernd-Peter Arnold, head of radio sub-regionalisation and *Chefredakteur* at HR, told me:

Ein Rundfunksystem ist um so unabhängiger, je gesicherter seine Finanzierung ist. .man muß aber sehen - das sage ich jetzt mal ganz kritisch und aus Erfahrung - daß die Rundfunkgebühr in der Bundesrepublik Deutschland ein politischer Preis geworden ist. Das war sie früher nicht. Das ist sie geworden. Jede Gebührenerhöhung in den zurückliegenden Jahren, und es gab nur sehr wenige, war immer begleitet von harten politischen Auseinandersetzungen, und die nächste Gebührenerhöhung wird es wieder sein. Ich sage mal etwas salopp, daß Politiker immer wieder versucht haben, sich das Wohlverhalten des Rundfunks zu erkaufen, in dem sie Druck über die Gebühren gemacht haben. (Interview, 26.8.1987)

This view is repeated by Martin Neuffer, a former *Intendant* of NDR:

In vielen Programmüberlegungen innerhalb der Anstalten fließt heute durchaus schon die Nebenerwägung ein, ob es sich denn "lohnt", die zu verärgern, die über die Einnahmen des Rundfunks letztlich entscheiden. (cit. in Fischer, 1979, p.83; see also Hoffmann, 1976, p.39)

If the substance of these allegations is correct, there are serious implications for public service broadcasting's independence because in its role as a "Medium" and "Faktor" in the process of opinion formation, it has to be in a position to report critically about its political paymasters (see Bausch, 1980, p.744).

The problems associated with the state's proximity to the licence-fee procedure have always existed (see Bausch, 1980, pp.684pp). Although the editorial and institutional independence of broadcasting is guaranteed in the Basic Law, the Constitutional Court has never ruled about the constitutionality of the state's involvement in determining the level of the licence fee, with the exception of a dissenting vote in the Constitutional Court ruling of 1971 (*Urteil des Bundesverfassungsgerichts vom 27. Juli 1971*, in MP 7-8/1971, pp.207-236). Three judges justified *Länder* involvement on the grounds that



ARD and ZDF have a monopoly which renders it against the public interest for them to determine their own licence-fee increases (p.231). They argued that *Länder* involvement was compatible with broadcasting's independence from the state, provided that no influence was exerted over programming, and provided that sufficient licence-fee income was awarded to enable ARD and ZDF to carry out their constitutional obligations (p.231; see also Rombach, 1985, p.54).

The politicisation of the licence-fee procedure is unlikely to decrease with the emergence of private broadcasting, because the disappearance of the public service monopoly reduces the force of ARD and ZDF's appeals for licence-fee increases. The contradiction between ARD and ZDF's constitutionally guaranteed autonomy in day-to-day running, and the state's role in determining the main source of their income is summed up by Hans Bausch, when he writes:

Die Unabhängigkeit des Rundfunks vom Staat ist in dem Maße Fiktion, in dem die Politiker nach pragmatischen und politischen Maßstäben die Höhe der Rundfunkgebühr festsetzen und sie damit als eine "politische Gebühr" bewerten (1980, p.760). . .An diesem Punkt findet die Unabhängigkeit des Rundfunks vom Staat ihre unüberwindbare Grenze. (1980, p.761)

#### 6.2.2 The Role of the KEF

To reduce politicisation of the licence-fee procedure and to aid them in their deliberations about the licence fee, the *Länder* prime ministers set up a standing commission, the KEF, (Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten) in February 1985 (see Bausch, 1977, p.291; Haselmayr, 1982a, p.446; Rombach, 1985, pp.58-

59). The KEF investigates the economic efficiency and funding requirements of the ARD stations and ZDF, and puts forward proposals to the prime ministers on the timing and amount of the next licence fee increase (see Hymmen, 1986, p.5). The KEF reports every two years, and since 1975 there have been six reports (1977, 1979, 1981, 1983, 1985, 1987). The twelve-member commission consists of four representatives from the *Länder* chancellories, four from the *Länder* auditing offices and four individuals versed in economics, management and the law (see Rombach, 1985, p.55).

Although the committee's reports have attracted a lot of attention, the *Länder* prime ministers have never followed its recommendations on the level of licence-fee increase. The *Länder* have always awarded higher increases than those recommended by the KEF, except after the first report in 1977, when they awarded the same amount of increase, but differed in the proportions given to the basic fee and the television supplement (see *Zitate aus dem KEF-Bericht*, ARD Jahrbuch, 1977, p.293). For example, in 1983 the KEF recommended a DM2.25 rise from January 1984, but the *Länder* instead approved a DM3.25 rise from July 1983 to take account of the cable pilot projects, efforts to improve terrestrial reception, and innovations in programming and technology (see *Rede vom Ministerpräsident Holger Börner zum Thema Staatsvertrag über die Höhe der Rundfunkgebühr*, MP 5/1983, pp.353-355).

The KEF's most lasting influence has been in highlighting the way ARD and ZDF run their financial affairs. Areas singled out for

regular criticism include overmanning, pensions, excessive wages, the lack of uniformity in wage scales, production costs, and budgeting by individual stations (see *Zitate aus dem KEF Bericht, ARD Jahrbuch, 1977, pp.292-294; Zitate aus dem KEF-Bericht, ARD Jahrbuch, 1980, p.317-321; Fünfter Bericht der Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten - Auszug: Wesentliche Ergebnisse, in MP 1/1986, p.32; see also Rombach, 1985, pp.58-59*). In contrast to the losses calculated by ARD and ZDF, the KEF has regularly forecast financial surpluses, so bolstering its arguments against further licence fee increases in favour of lower increases than ARD and ZDF have been demanding (see *Stellungnahme der Landesrundfunkanstalten vom 1.8.1977 zum Ersten Bericht der KEF vom 23.6.1977, ARD Jahrbuch, 1977, p.294*).

Responding to the KEF's finding, ARD in particular has accused the commission of treating it like one organisation, so ignoring differences between the stations of size, location, income, and programming obligations, which together determine expenditure (see *Stellungnahme der Landesrundfunkanstalten vom 1.8.1977 zum Ersten Bericht der KEF vom 23.6.1977, ARD Jahrbuch, 1977, p.295; Stellungnahme der Landesrundfunkanstalten vom 30.1.1980, ARD Jahrbuch, 1980, pp.320-321; Stellungnahme der ARD-Vorsitzenden zum Fünften Bericht der Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten, MP 1/1986, pp.33-35*). The KEF has also been accused of failing to take sufficiently into account wage and pension agreements agreed with the trade unions, and also broadcasting inflation (see *Stellungnahme der Landesrundfunkanstalten vom 30.1.1980, ARD Jahrbuch, 1979, pp.320-321*;

*Erklärungen der Landesrundfunkanstalten zum Dritten Bericht des KEF*, in MP 12/1981, pp.872-881).

In highlighting these areas of financial concern, the KEF walks a tightrope, as it must not be seen to interfere in the institutional and editorial autonomy of ARD and ZDF (see Rombach, 1985, p.59). This is virtually impossible, because in examining the financial requirements of the broadcasters the KEF is bound to ask questions about the extent of ARD and ZDF's activities, and this leads to accusations of interference (see Lehmann, 1983, p.767). For example, in 1985 the KEF was accused of trying to impose a financial framework on ARD and ZDF, guided by party-political motives which worked in favour of private broadcasting (see *Fünfter Bericht der Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten*, MP 1/1986, p.32; *Stellungnahme der ARD-Vorsitzenden zum Fünften Bericht der Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten*, MP 1/1986, p.33-35; see also Seidel, 1985, p.432; Hymmen, 1986, p.5). The main criticism concerned the KEF's decision to ignore ARD and ZDF's plans for Eins Plus and 3SAT in their conclusions, because the *Länder* prime ministers had not yet given their approval to these channels (*Fünfter Bericht der Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten*, MP 1/1986, p.32). This was condemned by ARD and ZDF as an infringement of their autonomy in decisions relating to programming (*Stellungnahme der ARD-Vorsitzenden zum Fünften Bericht der Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten*, MP 1/1986, pp.33-35; Hymmen, 1986, p.6).

The question of the extent to which ARD and ZDF can embark on new programming initiatives is a thorny issue involving the degree to which public service broadcasting is publicly accountable in matters of expenditure, and the degree to which the *Länder's* undoubted powers in determining the organisational framework of broadcasting extend to allowing new channels without impinging on public service broadcasting's institutional and editorial autonomy. In this respect, the KEF deserves some sympathy, as its task is not an easy one, but there is strong evidence that party-political forces within the KEF itself are leading to more overt politically-motivated conclusions about the state of public service broadcasting's finances (membership of the KEF generally reflects the party political divisions amongst the *Länder*) (see Hyman, 1985, p.5; Bühringer, 1986). This is disputed by those within the KEF, who argue that the commission's decisions are reached by a two-thirds majority which acts as a barrier to politically-motivated decisions (see Rombach 1985, pp.57-58; Schleyer, 1985). However, suspicions about the composition of the commission are given credence by the fact that the *Länder* prime ministers have promised to review this issue (*Staatsvertrag zur Neuordnung des Rundfunkwesens - Protokollerklärung*, in KuR 24.4.1987, p.26).

The KEF's activities also reveal the difficulty of measuring the economic value of what are primarily unique cultural goods with a social value: programmes (see Haselmayr, 1982, p.17; see also Haselmayr, 1982a, pp.447-448). It is already constitutionally accepted that broadcasting's social function, implicit in its programme obligations, means that issues of economic efficiency, although

important, have to play a secondary role to the fulfilment of these obligations (see *Urteil des Bundesverfassungsgerichts vom 27. Juli 1971*, in MP 7-8/1971, p.220; Lehr, 1983, p.367; Rühl 1984, p.592). Public service broadcasting's main social goal continues to be its contribution to the process of opinion formation, and its programme activities are still its main pursuit (see Lange 1985, p.231; Maier, 1986, pp.30-31). However, there is little consensus about the exact nature of public service broadcasting's social aims and the extent of its contribution to political culture, and still less any means of measuring its social efficiency in terms of funding (see Lehr, 1983, p.366). Until a value can be placed on its contribution to society, (an unlikely event given the differing opinions about its social and political obligations) the economic value of ARD and ZDF's programmes will continue to be a source of dispute.

Lehr argues that in spite of the need to act responsibly with their income, broadcasters cannot be judged by economic criteria alone, because they often undertake socially and culturally valuable programmes and activities which are not always cost-effective (Lehr, 1983, pp.369-370). These include the promotion of serious drama, financial support for the West German film industry, the upkeep of orchestras, and the maintenance of federalism (Lehr, 1983, p.370pp). The risks they take are creative not financial, because the programmes they transmit are not supposed to affect their funding, and this allows them to take innovative creative risks in their programming policies to the benefit of all viewers, not just the majority (see also Maier, 1986, p.31).

The politicised nature of the licence-fee procedure was reconfirmed by events in the latter half of 1987. ARD and ZDF asked for a DM20 monthly licence fee to replace the present fee of DM16.25 (*Intendanten halten 20DM für angemessen*, FR 6.10.85). This demand was widely criticised by both the CDU/CSU and private broadcasters as a threat to the dual system of broadcasting and an over-interpretation of what was capable of being funded within the concept of *Grundversorgung* (*Gebührenforderung als überhoht kritisiert*, FR 7.10.1987; *Private signalisieren Dialogbereitschaft*, FR 3.11.1987). Given ARD and ZDF's demands, the sixth KEF report in November 1987 must have come as a shock. The KEF recommended a rise from DM16.25 to DM18.60 from January 1989 (including 2% for the funding of the supervisory bodies of private broadcasting) (see *Damit öffentlich-rechtliche Bäume nicht in den Himmel wachsen*, FR 30.11.1987). Once again the KEF was accused of interfering in ARD and ZDF's institutional autonomy, and of failing to take account of new obligations, especially satellite channels and broadcasting inflation (see FR 30.11.1987). ARD and ZDF had calculated that they would need DM1.5bn and DM630m respectively by the end of 1990 to fund new programme initiatives and participation in the new media (videotext, improvements to Eins Plus and 3SAT, Breakfast TV), but the KEF recognised a sum of only DM800m for both, because it considered some of these proposals to lack "Planungsreife" (*Die Expertenrechnungen sind mitunter schon recht eigenwillig*, FR 9.12.1987). By March 1988, the issue of the next licence-fee increase was still unresolved, and had been further complicated by a squabble within ARD about contributions to the equalisation fund (see *Den einen zuwenig, den anderen zuviel*, FR 16.3.1988).

In summary, ARD and ZDF have little influence over the amount of licence fee income awarded to them, and the *Länder* have only limited influence on how this income is spent. ARD and ZDF's programme obligations are situated between these two factors, but they are not exactly defined either in terms of quantity or quality. In this situation tensions are bound to arise between the *Länder* and the broadcasters about the conflicting aims of broadcasting as a contributor to national culture on the one hand and the goal of economic efficiency on the other.

#### 6.2.3 Alternative proposals

Recognition of the defects of the present system for determining licence-fee increases has resulted in alternative proposals to reduce the problems of party-political interference. The two most widely discussed proposals have been the institution of an independent commission to determine the level of the licence fee and of indexation to remove the licence fee from the political arena.

The chairmen of the ARD supervisory committees proposed an independent commission consisting of members elected jointly by the *Land* parliaments and the broadcasting supervisory committees, and also including the chairmen of the *Land* auditing offices (see Bühringer, 1985, p.1). The commission would have determined the amount and duration of the licence fee in place of the *Länder* (Bühringer, 1985, p.1). The idea was not new, and the involvement of the broadcasters, in the form of the supervisory committees, has



parallels with the Bundespost and the Bundesbahn, where the administrative boards determine their own price increases (see *DAG fordert unabhängige Kommission zur Fortsetzung der Rundfunkgebühren*, MP 6/1982, p.424; see also Bausch, 1983, p.231). Claims for public service broadcasting's involvement in the procedure for determining the licence fee were justified on the grounds that editorial autonomy and autonomy over expenditure went hand-in-hand with some form of autonomy in determining the level of the licence fee (see Bühringer, 1985, p.2; Schmitz, 1986, p.462).

Under the ARD proposal the *Länder* would have retained overall responsibility for the licence fee, but would have given an independent commission whose members were elected with a two-thirds parliamentary majority a "Zuständigkeit auf Zeit" (Bühringer, 1985, p.3). In addition to the right to elect members to the commission, the *Länder* parliaments would have retained the ultimate sanction of being able to cancel any agreement (Bühringer, 1985, p.3).

The proposal was severely criticised by Hanns-Eberhard Schleyer (CDU), the KEF chairman and state secretary at the Rhineland-Palatinate chancellory (1985, pp.355pp). He accused the broadcasting committee chairmen of wanting to go beyond their powers of broadcasting supervision, and disputed their right to determine the level of the licence fee in contravention of democratically elected *Länder* parliaments (1985, p.355). Schleyer rejected criticisms of the existing procedure, claiming that the KEF is both politically independent and balanced in its composition, and that parliamentary

debate of the licence fee offered a welcome opportunity to examine the broadcasters' finances (1985, p.357). Not only do these arguments show the antagonism between the KEF and the broadcasting stations, they also reveal the unwillingness of the *Länder* to give up the power they have over broadcasting through finance (see Schleyer, 1985, p.356; Seidel, 1985, p.431; Maier, 1986, p.47).

Schleyer's objections to broadcasting stations' playing some role in determining licence-fee increases are not totally without foundation. A balance has to be struck between the broadcasters' right of autonomy in programming decisions and public accountability in matters of funding. Parliamentary involvement offers some means of public control over funding, for if ARD and ZDF became too closely involved in determining their own finances, they might be more inclined to be wasteful (see Rombach, 1985, p.64; Schmitz, 1986, p.463, p.465). According to this argument, parliamentary supervision of funding is justified because the public have no opportunity to avoid payment of the licence fee if they want to watch TV or listen to the radio (see Schmitz, 1986, p.465). The present system offers a framework for accountability, but, as explained in the previous section, it also offers opportunities for party-political and state intervention in broadcasting's internal affairs. However, an independent commission with too much party-political representation would not rectify this situation either (see Rombach, 1985, p.65; Schmitz, 1986, p.465).

Furthermore, an independent commission would only be effective if it was given a sufficient degree of autonomy to fix the level of the licence fee. Once again, this issue impinges on the financial control of parliaments. Alfred Schmitz suggests that this could be alleviated by unanimous *Länder* veto or individual *Land* veto, but this would push the commission into a purely advisory role (1986, p.464). A second alternative might involve parliaments only ratifying a licence fee increase previously recommended by a commission (Schmitz, 1986, p.464). This, according to Schmitz, would leave parliamentary powers intact, yet give a commission more than just an advisory role (1986, p.465).

To be effective, a commission would also require a firm legal basis and procedural rules grounded in the constitutional guarantees of broadcasting independence (Schmitz, 1986, p.684). This, according to Schmitz, is necessary because a commission would not remove the threat of political interference: it would merely shift responsibility for setting the licence fee from democratically elected and legitimate parliaments to an indirectly legitimated commission (1986, p.464). Moreover, the decision to fund new satellite channels, sub-regionalisation, and pay TV are not licence fee issues, but complex and difficult political issues about the extent of public service broadcasting's activities. These would have to be confirmed by the legislature before any commission could take up its duties (see Schmitz, 1986, p.466).

Indexation of the licence fee provides another alternative for removing the licence fee from the political arena (see Rühl, 1984, p.602). This is the solution supported by Bernd-Peter Arnold, deputy *Chefredakteur* and head of sub-regionalisation at HR who told me:

Es gibt eine Inflationsrate, die bestimmt wird. Es gibt ein Preissteigerungsindex. Es gibt viele andere Möglichkeiten die Rundfunkgebühr zu koppeln und damit auch zu automatisieren. Das heißt wenn die Kosten insgesamt nicht steigen, steigt auch die Rundfunkgebühr nicht. . .denn man darf ja eines nicht vergessen: ein öffentlich-rechtliches Rundfunksystem macht auf der Kostenseite jede Preissteigerung mit. Zum Beispiel, wenn Autos teurer werden, müssen wir für unsere Autos, die wir auch brauchen, mehr Geld bezahlen. (Interview, 26.8.1987)

Indexation to the cost of living was the temporary solution adopted by the British government in 1987 for funding the BBC prior to the introduction of subscription finance, probably after 1992. Indexation can help to depoliticise the licence-fee issue, and also offers the broadcasters more security because they know how much funding they will be getting. In the case of West Germany, the *Länder* could still play a role in making the broadcasters publicly accountable, because they could determine the level of the licence fee in the first year and the factors which would determine its future development in their choice of index (see Schmitz, 1986 p.467).

In 1982, the ARD stations proposed a two-stage model of indexation (see Stolte, 1984a, p.292; Maier, 1986, p.46). The first step would have entailed automatic indexation to a general index like the cost of living. The second stage would have meant the award of an extra sum, to be determined by the KEF, to pay for new developments and obligations (see Maier, 1986, p.46).

However, indexation is not without problems. First, there is the problem of finding an appropriate index (see Rombach, 1985, p.63). The ARD proposal already implies that a general index would not be sufficient to deal with broadcasting inflation specifically, unless there was a procedure to take account of new developments, either in the form of regular reviews of the index, or additional sums to take account of rising costs or stagnating advertising revenue (see Schmitz, 1986, p.470). It is generally accepted that broadcasting inflation is higher than normal inflation, and indexing could lead to a fall in income in real terms (see Hilf, 1985, p.37; Schmitz, 1986, p.472). The choice of an index would also have to take account not only of the quantitative value of broadcasting, but also of its qualitative value, expressed in its public service obligations and social goals. The choice of criteria to measure this value would rest ultimately with the *Länder*, something which once again would offer the threat of political intervention in public service broadcasting's editorial autonomy (see Schmitz, 1986, p.468).

Schmitz sees indexation as an option only when the broadcasting environment has settled (1986, p.472). Bernd-Peter Arnold sees more practical barriers to the implementation of indexed funding, namely *Länder* politics: "Ich bin ziemlich sicher, das wird nicht geändert, weil die Politiker hier einen Hebel zu haben glauben, indirekten Einfluß auf die Rundfunkanstalten zu nehmen" (Interview, 26.8.1987). The introduction of an independent commission to fix the level of the licence fee seems equally unlikely for similar reasons. The present system for fixing the level of the fee will probably continue, because

the *Länder* show little incentive to change it, preferring instead the hold they have over broadcasting through the present procedure.

### 6.3 Advertising - limits to further growth

Advertising on public service broadcasting, was first introduced to West German radio on 16th November 1949 and to television on 3rd November 1956, in both instances by BR (see Aecherle, 1972, p.24). A small amount of advertising had even been broadcast during the Weimar Republic before it was stopped by the Ministry of Propaganda in 1936 (see Aecherle, 1972, p.24). In 1987, advertising accounted for about 18% (DM908.6m) of ARD's total revenue of DM5.1bn (see ARD Jahrbuch, 1988, p.127). At ZDF, advertising accounted for about 38.5% (DM605m) of total income in 1987 (DM1.6bn) (see ZDF Jahrbuch, 1988, p.205).

The reason for the larger proportion of revenue accruing from advertising at ZDF is historical. When ZDF was established in 1963 there was insufficient licence-fee revenue to fund two public service broadcasting organisations. As a result, the *Länder* prime ministers agreed that ZDF should be allowed to use advertising as a substitute for income which was not available from the licence fee (see *Staatsvertrag über die Errichtung der Anstalt des öffentlichen Rechts "Zweites Deutsches Fernsehen" vom 6. Juni 1961*, in Ring, C-IV 3.1, Paragraph 23.2, p.9; see also Buckwitz, 1985, p.37; Steimer, 1985, p.1)

Television advertising on the ARD television network and on ZDF is broadcast between 17.30 and 20.00. At ARD, advertising is transmitted

during the regional opt-out periods on the ARD network. Rules governing the transmission of television advertising on the ARD network and ZDF are contained within the *ZDF-Staatsvertrag* and a supplementary document which also makes them applicable to the ARD television network (see Ring, C-IV 3.1, Paragraph 22.3, p.8; *Schlußprotokoll zu dem Staatsvertrag der Länder über die Errichtung der Anstalt des öffentlichen Rechts "Zweites Deutsches Fernsehen"*, in Ring, C-IV 3.1, p.10). They are as follows:

- a daily limit of twenty minutes a day with 25 minutes maximum to make up for slack periods in the summer;
- no advertising after 8pm;
- no advertising on Sundays or public holidays;
- no advertising breaks within programmes, only block advertising;
- no influence by advertisers on programme content (see also Aecherle, 1972, p.25; Buckwitz, 1985, p.36).

The rules on advertising seem to have been fixed in an arbitrary manner and this was underlined to me by SDR *Intendant*, Hans Bausch, who described a conversation he had with the then Prime Minister of the Rhineland-Palatinate, Peter Altmeier, prior to the passage of the *ZDF-Staatsvertrag* in 1961:

Da rief er mich eines Tages an und sagte:

- "Also, wir haben uns überlegt, wir sind gerade dabei, das Gesetz für das ZDF herauszuarbeiten. Wir haben uns überlegt, die Werbung muß irgendwie beschränkt werden".
- "Ja," sagte ich, "das sehe ich völlig ein. Wir wollen das auch, wenn wir genug Gebühr kriegen, aber auf die andere Seite sagt die Wirtschaft, zu einem freien marktwirtschaftlichen System gehört noch Werbung. Also müssen wir zu einer Konzession".

- "Also, was schlagen sie dann vor?"
- "Ja," sagte ich "wir wollen unser Abendprogramm nicht zerstören lassen".

Wir waren damals so eingebildet. Werbung im Abendprogramm, in unserem heiligen Abendprogramm, kam ja nicht in Frage. Also sagte ich,

- "Werbung nur vor 20 Uhr".
- "Naja," sagte er, "es muß ja auch begrenzt werden. Was schlagen Sie denn vor?"
- "Jetzt haben wir 12 Minuten Werbung" sagte ich "Schreiben Sie 15 Minuten".

Nächsten Tag lese ich in der Zeitung, daß die Ministerpräsidenten 20 Minuten beschlossen haben. Ich rufe den wieder an und sage,

- "Wieso 20 Minuten? Ich habe mich mit 15 Minuten einverstanden erklärt".
- "Ja," sagte er, "da ist mein Kollege aus Saarbrücken gekommen, und er hat gesagt, daß sie schon 16 Minuten haben. Dann haben wir halt 20 gesagt".

Und die Differenz zwischen 15 und 20 Minuten das sind ein Werbeaufkommen von DM500 Million im Jahr, haben oder nicht haben. (Interview, 29.7.1987)

The inter-Land agreement on the reorganisation of broadcasting has brought some changes to existing advertising rules (*Staatsvertrag zur Neuordnung des Rundfunkwesens*, in KuR 25.4.1987, pp.18-26). ARD and ZDF are now allowed to insert one advertising break within programmes longer than 60 minutes with the possibility of further exceptions for live sports transmissions (p.18). This brings ARD and ZDF on a par with private broadcasters. The inter-Land agreement also leaves open the option of public channels transmitting advertising on Sundays and public holidays if it does not lead to an increase in advertising revenue (p.20). This constitutes a safeguard against advertising revenues falling on account of commercial competition. The changes still leave ARD and ZDF a long way behind their private competitors. Legislation on private broadcasting and the inter-Land agreement allow an advertising proportion of 20% spread throughout the day on private television channels (p.21).



At ARD, responsibility for the sale of advertising on radio and television, and for the television programming which surrounds advertising, belongs to subsidiary companies wholly owned by the individual ARD broadcasting stations. Although the subsidiaries are responsible for some TV programming, the *Intendant* is ultimately responsible for content (see Aecherle, 1972, pp.24-35; Mauersberger, 1974, p.75; Kleinsteuber, 1982, p.37). Unlike their parent organisations, the subsidiaries are profit-making, but transfer their profits to their parent organisations (see Mauersberger, 1977, p.74; Kleinsteuber, 1982, p.37). Since January 1961, the subsidiaries have cooperated within the *Arbeitsgemeinschaft Rundfunkwerbung* (ARW), modelled on the cooperative system for the ARD network. Cooperation allows economies of scale by ensuring the maintenance of a suitable pool of framing programmes which can be used by all (Mauersberger, 1974, p.75; Kleinsteuber, 1982, p.37). At ZDF, the sale of advertising is undertaken internally (see Buckwitz, 1985, pp.36-38).

#### 6.3.1 Advertising at ARD and ZDF - a source of controversy

The introduction of advertising by the ARD stations was not done out of economic necessity, but to satisfy demand from advertisers, and to stifle calls for commercial broadcasting (see Montag, 1978, pp.85-86; Kleinsteuber, 1982, p.63). However, this concession to advertising interests did not prevent further calls for the introduction of private broadcasting, as witnessed by the numerous attempts to break the public service monopoly (see Montag, 1978, pp.76pp). In fact, the issue of advertising on public channels has always been controversial

amongst the opponents of public broadcasting, and even within ARD and ZDF there is no unanimous view.

The attitudes of public service broadcasters towards advertising can best be described as mixed. These mixed feelings stem from the conflict between broadcasting as a medium of social communication and as a factor in the formation of public opinion on the one hand, and on the other hand advertising, whose aim of promoting goods and services can conflict and inhibit broadcasting's social and political function (see Kiefer, 1981, p.328; Saxer, 1981, p.88). However, generally it is recognised that advertising affords some independence from party-political forces which fix the level of the licence fee, and that the pressures of advertising are infinitely preferable to political interference (see Kiefer, 1981, p.330; Lange, 1985, p.193; Schmitz, 1985, p.26; Scharf cit. in Tempest, 1986, p.150). Advertising helps to keep the price of the licence fee down, and unlike the press, public service broadcasting invests the financial rewards of advertising back into programmes which benefit all viewers, rather than paying some of it as dividends to a few shareholders (see Pfifferling, 1980, pp.649-650; Kiefer, 1981, p.330).

Some public service broadcasters have called for an extension of the advertising threshold beyond 8pm to enhance public service broadcasting's financial position, but this view is not shared by all broadcasters (see Lehr, 1984, p.11; *ARD: Werbetreff: Lehr plädiert für Aufhebung der 20-Uhr-TV-Werbegrenze*, in KuR 26.4.1986, p.8). Bernd-Peter Arnold, head of sub-regionalisation at HR, thinks that

advertising should not be extended beyond 8pm "damit die Abendprogramme, die großen Programme werbefrei bleiben. . . weil das automatisch zu unterbrochenen Sendungen führt". However, in spite of strong reservations about advertising he told me:

Wenn es darum geht, wie wir das erforderliche Geld in die Kasse kriegen, dann bin ich schon der Meinung, daß wir auch nach 20 Uhr werben sollten. Ich bin nur der Auffassung, man muß als öffentlich-rechtliches System glaubwürdig bleiben, und die Glaubwürdigkeit des öffentlich-rechtlichen Systems besteht unter anderem darin, daß man Sendungen nicht mit Werbung unterbricht, sondern daß man zwischen den Sendungen Werbung macht. (Interview, 26.8.1987)

Now that the inter-Land agreement on the reorganisation of broadcasting has been agreed, which effectively freezes levels of advertising on the public channels, any relaxation of the 8pm rule seems unlikely.

The broadcasters claim that advertisers have little opportunity to influence programme content, because demand for advertising far exceeds supply (see Mauersberger, 1977, p.75; Lange, 1985, p.193; Schmitz, 1985, p.26; Seidel, 1985, p.430). Undue influence by advertisers over programming is also hindered by the separation of advertising activities from programme production, and by the maintenance of the licence fee as the main source of income (see Seidel, 1985, p.430). However, ARD and ZDF are not totally immune to the pressures of advertising, because they need the revenue. In their attempts to maximise this revenue potential, they are helped by the fact that the ARD/ZDF coordination agreements which aim to give viewers a choice of different television programmes, do not apply to the period when advertising is transmitted. At these times ARD and ZDF are in direct competition for viewers, and they screen similar

types of programmes, mainly entertainment-oriented, in order to maximise their audiences and advertising revenue. This type of competition has become particularly intense with the advent of private television and financial difficulties which have forced ARD, in particular, to utilise its advertising space more effectively (see Chapter 4).

The press, represented by its trade organisation, the BDZV (Bund Deutscher Zeitungsverleger), has always been a major opponent of advertising on ARD and ZDF, arguing that press advertising revenues are at risk. To protect the local/regional press the public broadcasters have voluntarily refrained from transmitting local or regional advertising, but this has not stifled press protests (see Aecherle, 1972). The argument about distorted competition in advertising formed the basis of the BDZV's unsuccessful attempt in 1964 to push through the idea of ZDF as a purely advertising-supported station run by press interests (see Montag, 1978, pp.142pp; Bausch, 1979, p.596). Hostility to TV advertising also resulted in BDZV pressure to have advertising banned on public TV channels in 1965 (see Bausch, 1979, p.596).

In 1967 the press campaign suffered a severe blow with the publication of the Michel-Kommission report, a report instigated by central government in Bonn to investigate press claims of unfair competition from TV advertising (*Bericht der Kommission zur Untersuchung der Wettbewerbsgleichheit von Presse, Funk/Fernsehen und Film, Deutscher Bundestag, Drucksache V/2120, 28.9.1967*). The report

established that television advertising had not affected press advertising revenues (see Montag, 1978, p.152; Head, 1988, pp.44-46). These views were reinforced by the Günther-Kommission in 1968 (*Schlußbericht der Kommission zur Untersuchung der wirtschaftlichen Existenz von Presseunternehmen und der Folgen der Konzentration für die Meinungsfreiheit in der Bundesrepublik Deutschland, Deutscher Bundestag, Drucksache V/3122*). This report stated that the problems of the press were more a result of concentration and increased competition within the print sector than of competition for advertising from television and radio (see Montag, 1978, p.156; Pfifferling, 1980, p.651).

In spite of arguments to the contrary, the press has continued to argue that its economic existence is threatened by the advertising activities of ARD and ZDF. Following the introduction of advertising to NDR's radio services for the first time in 1980, the BDZV stated: "Dadurch ist in der Bundesrepublik eine Art kommerzieller Rundfunk unter öffentlich-rechtlichem Deckmantel entstanden, der die Existenzgrundlage der privatwirtschaftlichen Presse schmälert" (BDZV, 1980, p.2). Such arguments are rejected by advertisers, who regard extensions to available advertising time as a valuable addition to a restricted market (see *Hörfunkwerbung im NDR muß auch nach 1983 fortgesetzt werden*, AKW Arbeitskreis Werbefernsehen der deutschen Wirtschaft, Newsletter, 29.6.1982). According to Wolfgang Schmitz, advertisers express no preference for private or public broadcasting to satisfy their advertising requirements (1985, p.27). They just want more availability of advertising space at the right price (see Kiefer,

1981, p.330; *Der Werbemarkt hat Platz für alle. Stellungnahme des Arbeitskreises Werbefernsehen zu der "Dokumentation über die Auswirkungen der Hörfunkwerbung auf das Anzeigengeschäft der norddeutschen Zeitungen"*, MP 12/82, pp.789-90; Schmitz, 1985, p.27).

According to Hans Kleinsteuber, large press concerns like Springer, Bauer, Burda, Bertelsmann are less concerned about falling press advertising revenue than about the need to find new investment opportunities, because anti-trust laws have put a break on their attempts to acquire further print objects (1982, p.60). To some extent new investment opportunities have been found in private television and radio (Head, 1988, pp.47-48). This means that ARD and ZDF have to compete for advertising with the major press concerns on two levels - as print concerns and as broadcasters. The involvement of the major press concerns in broadcasting also has implications for the local and regional press. Recent studies point out the dangers to small second and third rank local newspapers if broadcasting is extended to sub-regional and local areas (see Kiefer, 1984, pp.758-761). Ironically, small local press concerns would be most at risk from their larger counterparts' press and broadcasting activities.

Press opposition to advertising on ARD and ZDF has become more vocal with its involvement in private broadcasting. In October 1985, both the BDZV and SAT 1 protested against what they saw as ARD and ZDF's aggressive advertising activities, and demanded a freeze on advertising on ARD and ZDF broadcasting services in the interest of private broadcasting's economic survival (SAT 1, 1985, p.765; BDZV,

1985, p.770). Their protests were especially aimed at the introduction of advertising on HR's third television channel. These concerns were taken up by the CDU/CSU in negotiations for an inter-Land agreement on the reorganisation of broadcasting (see Vogel, 1985, p.19). The disputes surrounding advertising on WDR radio and HR's third television channel revealed the intensity of the debate, and were regularly cited as the reason for breakdowns in negotiations (see Chapter 3). The CDU/CSU *Länder* sought to implement a freeze on advertising on ARD and ZDF in terms of amount, scope, placing, and transmission area.

Apart from minor concessions on advertising for the public channels, referred to earlier, the inter-Land agreement on the reorganisation of broadcasting has effectively blocked further extension of advertising on ARD and ZDF. Private broadcasting has been guaranteed "angemessene Einnahmequellen", in this case advertising, on the assumption that it, unlike ARD and ZDF, is disadvantaged in terms of reach and dependence on advertising revenue (*Staatsvertrag zur Neuordnung des Rundfunkwesens*, in FK, 27.3.1987., pp.18-26). The contentious issue of advertising on HR's third television channel was solved by allowing HR, exceptionally, to continue this practice until it has been given sufficient licence-fee income to finance its new fourth radio network (p.20). The problem of WDR radio advertising was solved by allowing each ARD station an average of 90 minutes of radio advertising daily (p.20). This gave some ARD stations (BR, SWF, HR) an advantage, because their existing levels of radio advertising already exceeded 90 minutes a day. In

November 1987, WDR, the last ARD station to do so, introduced 40 minutes of advertising to its first radio network, and a further 20 minutes to its second network (*WDR-Rundfunkrat definiert Rahmen der Radiowerbung*, KuR 4.4.87, p.11; *WDR-Hörfunkwerbung: Nachfrage größer als das zeitlicher Angebot*, KuR 22.7.1987).

### 6.3.2 The impact of commercial competition on advertising

Although it is difficult to make any forecasts, the introduction of commercial, advertiser-supported broadcasting channels will undoubtedly affect the advertising income of ARD and ZDF, who prior to 1984 had a monopoly of broadcast advertising. As private channels increase their reach, they will become a more attractive alternative to advertisers. The existence of more advertising-supported channels means an increase in available advertising time, and ARD and ZDF may have to become more flexible in their pricing policies to remain competitive with their rivals, where previously they had been able to charge high prices for a limited resource. Furthermore, within a dual system the private broadcasters would appear to have competitive advantages, with less restrictive advertising stipulations and the opportunity of using more attractive framing programmes because they are subject to fewer programme obligations, especially those relating to the provision of information, culture, and minority programmes.

Previous confidence in advertising as a source of income for public broadcasting has been based on the experience of what has been until now a very controlled and restricted market with demand far exceeding



supply (see Buckwitz, 1985, p.37; Schmitz, 1985, p.27). Even the argument about the limited influence of advertisers on programme content is becoming more tenuous. Stagnation in the growth of the licence fee and the prospect of commercial competition is also affecting the competitive relationship between ARD and ZDF. Both have endeavoured to popularise the programming content which surrounds their TV advertising slots, and this has increased tension between them (see chapter 4). Similar tendencies have been observed amongst the ARD radio stations, where popular music is being extended at the expense of other contributions to increase the attractiveness of programmes to advertisers. Massive increases in ARD and ZDF's advertising revenue are unlikely to occur in future, because they can only increase their advertising revenue by increasing their advertising rates, not by increasing the amount of advertising time they transmit (Steinbach, 1988, p.200).

In 1987, radio took a 7.5% share and television a 17.3% share of gross advertising expenditure of DM11.9bn in the classical media (press, magazines and broadcasting only) (see Steinbach, 1988, p.199). By contrast, the print sector, excluding the free press, accounted for 75.2% of gross advertising expenditure (Steinbach, 1988, p.199). These shares have remained relatively constant since 1982 in spite of continued growth in advertising expenditure, lending support to the argument that the print sector has not suffered unduly from the introduction of more advertising on public and private TV and radio (see Steinbach, 1987, p.169; Steinbach, 1988, p.199). Similarly, when television advertising was first introduced to West Germany, it was

integrated quite easily, with only a slight decline in revenue for the film and press sector and with an increase in revenue for direct and magazine advertising (see Tonnemacher, 1986, p.139).

Growth in radio's share of advertising, an increase of 18.2% in 1987, was particularly high because of the introduction of three commercial radio stations in North Germany, which together managed a joint gross advertising turnover of DM75.5m (Steinbach, 1988, p.198). Growth in radio advertising was also enhanced by the introduction of advertising to WDR's second and fourth radio networks in November 1986, the income from which totalled DM23m (Steinbach, 1988, p.198). In television the advertising revenue of SAT 1 and RTL plus combined in 1987, DM127m, accounted for half of the advertising growth (8.7%) in television (Steinbach, 1988, p.198). In spite of increases in the revenue of commercial television broadcasters, their market share of net advertising expenditure in television is still small, totalling about 5.3%, compared to the 94.7% share taken by television advertising on ARD and ZDF (see Steinbach, 1988, p.202).

In radio, however, NDR, which is only allowed to transmit 42 minutes of radio advertising daily compared to 100 minutes plus at other ARD radio stations, is losing advertising revenue because of competition from three new rivals: Radio Hamburg, ffn (Lower Saxony) and Radio Schleswig-Holstein. With advertisers flocking to the new radio stations in North Germany, NDR suffered an 8.7% drop in radio advertising income from DM62.4m to DM57m in 1987, compared to increases in revenue at all the other ARD stations (Steinbach, 1988,

p.203). The success of Radio Hamburg, ffn (Lower Saxony), and Radio Schleswig-Holstein, which market their advertising sales jointly is due to terrestrial reach throughout North Germany, the limited amount of advertising allowed on NDR radio, and popularity amongst younger listeners (see *Vertreter im Äther*, Wirtschaftswoche, 14.8.1987, pp.68-70). By contrast, commercial radio stations in the south of the country have a much harder task, because of the greater number of public radio stations (BR, SDR, SWF, and SR), which transmit in excess of 100 minutes of advertising daily on their services and which are markedly more populist in profile than NDR. In television, the impact of commercial competition is less clear. SAT 1 and RTL Plus have more than doubled their advertising income in 1988, but this has not led to a fall in ARD or ZDF's advertising revenue, yet (see Steinbach, 1988, p.203).

Compared to the United Kingdom, where TV advertising accounts for about a third of all advertising expenditure (see Tempest, 1986), the proportion of expenditure on TV advertising in West Germany is small, less than 10% of the total (see Head, 1988, p.42). This imbalance, compared to other developed countries, would seem to imply that there is room for growth in television advertising. However, any growth would probably come at the expense of the print sector, which currently takes about two-thirds of advertising expenditure (see Tempest, 1986; Tonnemacher, 1986).

It is unlikely that ARD and ZDF will be able to increase their advertising revenues to the extent they have done in the past.

Greater reach by private broadcasting, its more flexible advertising rules, and its attractive framework of entertainment programmes will lead to a drop in demand for ARD and ZDF's advertising slots and a subsequent fall in advertising rates.

#### 6.4 Product placement and sponsorship

There are undoubtedly legislative and competitive barriers to further growth in public service broadcasting's advertising revenue. However, there are ways of circumventing existing restrictions on advertising, which offer not only ARD and ZDF, but also private broadcasters, substantial financial benefits. Traditionally advertising has been broadcast in blocks, clearly separated from editorial content. However, new forms of advertising, which are integrated within the programmes themselves threaten this principle of separation.

Product placement, commonly called *Schleichwerbung* by its detractors, has become more prevalent on both ARD and ZDF. Some commentators seek to draw a distinction between product placement and *Schleichwerbung* (see Limmer, 1986, p.21; Scheele, 1986, pp.27-28; Head, 1988, p.50). According to this interpretation, product placement involves reference to products or services which are essential to programme content (see Limmer, 1986, p.21). *Schleichwerbung*, by contrast, refers to the positioning of products or services which are not essential to programme content, and are only introduced to achieve an advertising effect (see Limmer, 1986, pp.13pp). This distinction may be difficult to prove in practice, because it is sometimes

impossible to make a qualitative distinction between what is dramatically necessary and what is not.

There are many different types of product placement (see Limmer, 1986, p.13pp; Gottschalk/Scheele, 1986, p.25; Sack, 1987, pp.104pp). It can be actively encouraged by broadcasters, because the use of commercial products and services helps to reduce production costs. Examples include the positioning of brand-name products like cars and household goods in popular series or the promotion of goods and services in consumer programmes (see Gottschalk/Scheele, 1986, p.25; Sack, 1987, pp.105pp; Head, 1988, pp.50-51). The prominent display of prizes in quiz shows is one of the oldest forms of product placement (see Limmer, 1986, p.14). Other forms of product placement are less subject to control by the broadcasting stations. For example, broadcasters can do little either about advertising hoardings at sporting events or sponsors' names on football kits (see Sack, 1987). Acquired programmes like *Dallas* or the *James Bond* feature films also include products, for whose display private interests have paid handsomely (see Limmer, 1986, p.14; Scheele, 1986, p.26; Sack, 1987, p.105).

However, unlike their American counterparts, West German broadcasters are not allowed to accept direct payment for product placement (see Limmer, 1986, p.13). Although the broadcasting stations are not paid directly for the visual portrayal of products, there are benefits in the form of no fee for guest appearances, cheaper acquired

programmes, or reduced production costs (see Gerlach, 1984, p.116; Scheele, 1986, p.26).

Merchandising, unlike product placement, forms a direct, and increasingly important source of income for both ARD and ZDF. It involves the sale of secondary rights to private enterprises to market products, usually books, records, and tapes, associated with television programmes (see Gerlach, 1982, p.51; Gerlach, 1984, p.116; Limmer, 1986, p.20). Agencies like Montanamedia owned by Hans R. Beierlein, and Merchandising München KG, owned by the Taurus Group, market the products on behalf of ARD and ZDF (see Gerlach, 1982, p.54; Limmer, 1986, pp.20-21). Accusations of circumventing rules on the separation of advertising from editorial content are minimised by giving a proportion of the income earned through record sales to charity appeals (see Gerlach, 1984, p.114; Limmer, 1986, p.20).

Opportunities for sponsored programmes are limited on ARD and ZDF. However, Ernst Fuhr, *Justiziar* at ZDF, sees some scope for "nichtgestaltete Sponsorwerbung" (cit. in Limmer, 1986, p.21). "Nichtgestaltete Sponsorwerbung" occurs when there is no direct relationship between the business interests of the sponsor and programme content (see Sack, 1987, p.107). The sponsor is merely credited at the beginning or the end of the transmission (see Gerlach, 1984, p.115; Limmer, 1986, p.21). Some commentators see a future for this type of sponsorship for sporting or cultural events, which may become too expensive to fund by other means (see Gerlach, 1984, p.116; Beierlein, 1987, p.23). By contrast, "Gestaltete Sponsorwerbung" gives

the sponsor unlimited influence over editorial content. As such, it is not allowed under legislation on either public service broadcasting or private broadcasting in West Germany because it conflicts with the principle of broadcasting's independence.

Some distinction has to be made between sponsored programmes, described above, and sponsored events (see Sack, 1987, p.104). Sponsored events are only transmitted by the broadcasters, and they derive no direct financial benefit from the transmission (see Limmer, 1986, p.20). However, the cost of acquiring transmission rights to a sporting event, like football, can be kept down if the event is sponsored, because the sponsors are keen to reach a national audience (Gottschalk/Scheele, 1986, p.25).

#### 6.4.1 The logic behind product placement and sponsorship

All the activities described in the previous section have one predominant feature in common. They all avoid existing rules on the separation of advertising from editorial content, and this makes them attractive to both broadcasters and advertisers. Rules on the separation of programming and advertising are contained in the ZDF-*Staatsvertrag* together with a closely related principle: that advertisers should not exert any influence over editorial content (ZDF-*Staatsvertrag*, in Ring, 1980, C-IV 3, Paragraph 22). These rules were reaffirmed in the inter-Land agreement on the reorganisation of broadcasting of 1987 and are also applicable to private broadcasting

(*Staatsvertrag zur Neuordnung des Rundfunkwesens*, in KuR 25.4.1987, pp.18-26, Artikel 3, Artikel 7).

Product placement, sponsorship, and reference to merchandised products during transmission, are all forms of advertising, but do not appear to be covered by the rules described above. Unlike traditional block advertising they are not subject to the 8pm advertising threshold or the ban on advertising on Sundays or public holidays. As such they are becoming an increasingly lucrative, market with product placement alone estimated to be worth between DM40-50m a year (see Limmer, 1986, p.13). ARD and ZDF are often accused of self-commercialisation in pursuing this form of financial support, but in view of stagnating income from traditional advertising and the licence fee, and increased competition, these activities are gaining increased legitimacy (see Gerlach, 1984, p.113; Head, 1988, p.51). This reveals a deep change in attitude from previous practice exemplified in the words of former WDR *Intendant*, Klaus von Bismarck, who stated:

Soweit irgendmöglich, muß vermieden werden, daß durch das Benennen oder Zeigen von Firmenbezeichnungen Markennamen oder auf ähnliche Weise im allgemeinen redaktionellen Programm einzelnen Firmen Wettbewerbsvorteile entstehen können. (cit. in Limmer, 1986 p.19)

Cooperation with commercial interests in the form of product placement, merchandising and sponsorship is justified by the broadcasters on several counts. Primarily, cooperation is seen as a way of reducing ever increasing production costs (see Gerlach, 1982, p.52). According to Peter Gerlach, the former head of ZDF's department "Kooperation mit Dritten", production costs of DM5m for *Traumschiff*, a



popular series, would have been DM2-3m higher if a shipping company had not provided a ship free of charge and if merchandising rights had not been sold to third parties (1984, p.114). Gerlach claims that outside interference is not a problem, because cooperation only takes place if ZDF's editorial integrity remains intact, and because the idea for a programme always precedes any involvement with third parties (1982, p.52; 1984, p.112, p.114).

It is claimed that outside influence is kept to a minimum, because the financial benefits of cooperation are small (less than one per cent of total public service broadcasting revenues) compared to licence fee and advertising revenues (see Gerlach, 1984, p.113; Seidel, 1985, p.429). Income from cooperation is seen as a useful additional source of income which ultimately benefits the licence-fee payer because this income is taken into account by the KEF when it assesses the level of the licence fee (Fuhr cit. in Limmer, 1986, p.19). In a trial period from 1981 to the first quarter of 1984, ZDF is estimated to have earned DM20m with DM9.2m from cooperation with the record industry and DM10.1m from cooperation with private firms and institutions compared to a total annual income of DM1.4bn (see Gerlach, 1984, p.116; Limmer, 1986, p.19).

Within ARD and ZDF views are divided about cooperation with third parties. According to Klaus Berg, NDR *Justiziar*, product placement is a "selbstverständliche Versuchung" which must be resisted if the principle of separation of advertising and editorial content is to be maintained (cit. in Scheithauer, 1987). Others, such as SWF *Intendant*

Willibald Hilf, would like to see more flexibility in both traditional and new forms of advertising (see Scheithauer, 1987).

Attempts to integrate advertising within editorial content are also influenced by the requirements of the advertising industry. Since 1984 the number of available TV channels has increased more than threefold, and this threatens to fragment the audience and reduce the advertisers' ability to reach viewers by the traditional method of block advertising. Pay channels, which generally contain no advertising at all, pose an even greater threat. Comparisons are made with the United States, where the emergence of cable television and pay channels has resulted in an annual market for product placement of \$2-3 billion (see Limmer, 1986, p.13). The effectiveness of traditional advertising methods is further reduced by the viewers's tendency to switch over or off during advertising breaks, something made easier by remote control units (see Limmer, 1986, p.14; Head, 1988, p.49). This is called "zapping" and is believed to occur at a rate of between 30-50% (see Limmer, 1986, p.19). The use of video recorders for taping television programmes, and then fast-forwarding advertising slots is also damaging the effectiveness of traditional block advertising (Limmer, 1986, p.14). The portrayal of products within programmes can help to combat these tendencies.

Advertisers are also considering the cost benefits of product placement and sponsorship over traditional advertising blocks (see Head, 1988, p.50). For example, in 1986 the average cost of a minute of advertising on ARD was about DM84,000 compared to DM60,000 a

minute on ZDF (Limmer, 1986, p.19). By comparison, DM60,000 spent on product placement in one episode of a popular series with an 18 million audience gives a cost per minute per thousand viewer contacts of DM3.34 compared to DM19.25 at ARD and DM15.19 at ZDF for a minute of block advertising (Limmer, 1986, p.19). A further advantage of product placement is that it can be used to promote products which are prohibited in block advertising, for example tobacco products (see *Schleichwerbung: WDR erwägt Schnitte bei Wenders' "Paris, Texas"*, KuR 1.1.1987, p.8; *Schleichwerbung: Schnitte bei Film "Paris, Texas"?*, FR 20.1.87).

#### 6.4.2 Legislative turmoil

Existing advertising rules are clearly not adequate to deal with new forms of advertising, because when they were first drawn up legislators were only thinking of block advertising (see Scheele, 1986, p.22). In spite of attempts to justify new modes of advertising, there have been problems, largely due to legal definitions which lack clarity, and occasions when advertisers and broadcasters have overstepped the bounds of what is permissible.

Rules on the separation of advertising and programme content exist not only to preserve broadcasting's independence from commercial interests, but also to safeguard broadcasting's competitive neutrality (see Scheele, 1986, p.22; Sack, 1987, p.114). Favouring some commercial enterprises above others in programmes would be in contravention of legislation on unfair (unlauter) competition

(Gottschalk/Scheele, 1986, p.26). Unfair competition can occur, because there is only a limited amount of transmission time available and because the broadcasters tend to favour the requirements of large commercial concerns (see Gottschalk/Scheele, 1986, p.26). To avoid these accusations, the public broadcasters vary the type of products shown. For example, if one television detective drives a BMW, another in a different series will drive an Opel (see Limmer, 1986, p.21).

Under the current legislative environment it is difficult to know when product placement can be justified on the grounds of the public's right to know, for example in consumer programmes, and when it is used merely to promote goods and services. Furthermore, product placement in purchased programmes and events has to be weighed against the public interest and the possibility that programmes might not be transmitted if rules on separation of advertising and programme content were interpreted strictly (see Scheele, 1986, pp.25-26). However, there is a growing suspicion that products shown in popular drama, for instance, are intrinsic neither to programme plot nor to editorial content, and that third parties are gaining too much influence over editorial decisions (see Gottschalk/Scheele, 1986, p.25; Scheele, 1986, p.24). There are strong indications that programmes are being made which give full vent to advertising interests. For example, in 1985, Lufthansa, the national airline, provided ZDF with thousands of free airmiles for a ZDF drama production, *Grenzenloses Himmelblau* (see Gottschalk/Scheele, 1986, p.25). Publicity for the airline was so obvious that ZDF stated that cuts might have to be made for the repeat showing (*ZDF will Schleichwerbung in Grenzen*

halten, FR 25.7.1986). Examples of this type of cooperation are by no means isolated (see Ott, 1987, p.12; Gottschalk/Scheele, 1986, p.25; Limmer, 1986, pp.13-15).

Legislation on sponsorship and the transmission of sponsored events is equally vague. The inter-Land agreement allows ARD and ZDF to make use of sponsorship "in der bisherigen Weise" as long as it does not serve the economic interests of the sponsor (*Staatsvertrag zur Neuordnung des Rundfunkwesens*, KuR, 27.3.1987, pp.18-26, Artikel 3). According to Andreas Schardt, *Justiziar* at SAT 1, this would seem to imply that ARD and ZDF can show only the sponsored programmes they had transmitted prior to the passage of the inter-Land agreement (Interview, 5.8.1987). These have all been supported by public institutions like the police force. By contrast, the inter-Land agreement's rules on sponsorship for private broadcasting are much broader (Artikel 7).

ARD and ZDF's involvement in these new forms of advertising has attracted publicity, because product placement and sponsorship are precisely those areas of advertising which private broadcasters, wholly dependent on advertising income, wish to exploit. The most publicised clashes between private and public broadcasters have been over the transmission of sponsored events. The broadcasters receive no direct payment for the broadcasts, because the event, not the programme, is sponsored, but there is a financial advantage in obtaining cheaper rights to a sponsored event because of the chance of national coverage for advertisers (see Scheele, 1986, p.26).

In April 1987, ARD transmitted an international football match between Italy and West Germany. The event was sponsored by AGFA for a fee of DM100,000. The DFB, the West German football association, and ARD maintained that the contract was purely a sponsored event; others maintain that ARD was sold the rights of transmission at a reduced price provided that reference was made to the sponsor at the end of the transmission (see *Agfa-Signet im ARD-Programm wirkt wie ein Signal zum Sturm*, FR 24.4.1987; Andreas Scharat, Interview, 5.8.1987). The insertion of the firm's insignia at the end of the match was a first in the history of public broadcasting.

Hans Beierlein of Montanamedia saw ARD's new stand on the transmission of the sponsor's name as a direct outcome of the appearance of private competition and changes in the composition of the ARD-ZDF *Sport-Kommission* (1987, p 23). The BKS (Bundesverband Kabel und Satellit), the professional body representing private broadcasters, demanded that ARD undertake a declaration to cease this practice or it would start court proceedings on the grounds of unfair competition and a failure to separate advertising and programme content (*Agfa-Signet im ARD-Programm wirkt wie ein Signal zum Sturm*, FR 24.4.1987). This protest from private broadcasters must be put in context. They are not against reference to sponsors, because they too would like to transmit sponsored sporting events. Their primary concern was that ARD and ZDF should not monopolise this form of sponsorship (FR 24.4.1987).

ARD refused to comply with BKS's demands, pointing to the public interest as justification for transmission (*ARD lehnt die vom BKS geforderte Erklärung ab*, FR 5.5.1987, p.16; *Sponsor-Sendungen werden für die ARD auch künftig Thema bleiben*, KuR 1.7.1987; *Unlauterer Wettbewerb mit einem Firmen-Logo*, FR 25.2.1988). The BKS applied for a temporary injunction to prevent ARD from repeating the action on the grounds that ARD had broken legislation on unfair competition (*Gesetz gegen unlauteren Wettbewerb*) and ARD's own rules on the separation of advertising and programme content (*ARD-Grundsätze zur Trennung von Werbung und Programm*; *Sponsor-Fußball Fall für Gerichte*, FR, 7.5.1987, p.10). The first allows the complainant to sue and demand damages from a competitor who has made a business decision in contravention of standard practice, for if SAT 1 had shown the same event, it would have had to have added the reference to its own advertising quota of 20%, but ARD had not included the insertion as part of its advertising quota (*SAT 1 News*, 20.5.1987, p.8; *Unlauterer Wettbewerb mit einem Firmen-Logo*, FR 25.2.1988). ARD's own rules only permit the transmission of a sponsored event if there is an overriding public interest and no threat to editorial independence. (*Sponsor-Fußball Fall für Gerichte. Einstweilige Verfügung beantragt*, FR 7.5.1987).

On 30th March 1988, the Frankfurt *Landgericht* threatened ARD with a DM500,000 fine if it repeated its action (*ARD darf keinen Sponsor nennen*, FR 31.3.1988). The court rejected ARD's argument that it could only acquire the rights to the transmission on the condition of transmitting the reference to the event's sponsor, arguing that public service broadcasting was constitutionally obliged to be protected from

the outside influence of third parties (FR 31.3.1988). The Court also rejected ARD's argument about the transmission being in the public interest, because viewers have no right to the transmission of a football match, since sport does not belong to those type of programmes which are overwhelmingly important (FR 31.3.1988).

Concern about recent events has led both ARD and ZDF to draw up rules on product placement, merchandising, and sponsorship (see *ARD entschieden gegen "Product Placement"*, FR 7.10.1986). Both public and private broadcasters are expressly required to draw up these rules under the terms of the inter-Land agreement on the reorganisation of broadcasting of 1987. Some commentators feel that the rules have in fact broadened the scope for this source of finance and doubt the effectiveness of self-regulation by ARD and ZDF (see Gottschalk/Scheele, 1986, p.26; Limmer, 1986, p.20; Ott, 1987, p.12).

The ARD *Intendanten* approved a set of rules on the separation of advertising and programme content in Berlin on 22/23. October 1986 (*Grundsätze zur Trennung von Werbung und Programm*, in KuR 1.11.1986, pp.23-24). In March 1988 these were replaced by a new set of rules (*ARD Richtlinien über die Trennung von Werbung und Programm*, in MP 4/1988, pp.259-260). The ARD guidelines mirror similar guidelines passed by the ZDF television council on 27th March 1987 (*Vorläufige Richtlinien zur Zusammenarbeit mit Dritten für Sendungen des ZDF*, MP 11/1986, pp.187-189).



Under the ARD and ZDF guidelines product placement is expressly forbidden in all types of programmes including independent commissions, co-productions, and acquisitions (ARD, 1988, p.259; ZDF, 1987, p.187). However, this is weakened by various exceptions which allow product placement if there are overwhelming editorial or cultural reasons (ARD p.259; see also ZDF p.187). Exceptions are also possible for purchased programmes or sports programming, which could not otherwise be transmitted or if there is overwhelming public interest in the programming (ARD, p.259; see also ZDF, p.187). Payment in kind or cash for the inclusion of products is not allowed (ARD, p.259; see also ZDF, p.187), but exceptional acceptance of free or cheap production facilities or other services is possible if there is no undermining of editorial independence (ARD, p.260; see also ZDF, p.187).

The guidelines allow sponsored programmes if content is not directly linked to the economic interests of the sponsor, and if the sponsor is mentioned at the beginning or the end of the programme (ARD, p.260; ZDF, p.187). The transmission of sponsored events is permissible if there is overwhelming public interest in the programme, and if editorial independence is not affected (ARD, p.260; see also ZDF, p.188). Reference to the sponsor has to be restricted to a minimum, but in the ARD guidelines reference to the sponsor can be made if this is necessary for editorial reasons (ARD, p.260; see also ZDF p.187). Reference to products (books, records etc) associated with individual programmes and produced by third parties is only possible

if there is a special interest in the programme and the products are a necessary programme accompaniment (ARD, p.260; see also ZDF, p.188).

ARD and ZDF have continued to support the idea of sponsored programmes, arguing that sponsorship will become more prevalent especially in foreign programmes, sporting and cultural events. An ARD statement on 25th June 1987 stated that it was not in the public's interest "auf rechtlich jetzt und künftig zulässige Möglichkeiten der Hinnahme von Sponsorhinweisen zu verzichten". ARD argued that the inter-Land agreement of 1987 and the ARD guidelines on the separation of advertising and programmes do not exclude the naming of sponsors (*Sponsor-Sendungen werden für die ARD auch künftig Thema bleiben*, KuR 1.7.1987, pp.10-11). Legally, the problems associated with sponsorship, product placement, and merchandising have still to be fully resolved. There will undoubtedly be further court cases on the subject, but until such time as the legal situation is clarified, ARD and ZDF will continue to operate on the thin dividing line of what is legally permissible and what is not. This will happen as long as they see their status threatened by private broadcasters, and as long as they see themselves locked in a financial straitjacket of inadequate licence-fee income and receding advertising revenues.

#### 6.5 Other alternatives and future outlook

The previous sections of this chapter have described the problems associated with the existing mixed method of funding public service broadcasting in West Germany. The licence fee is vulnerable to

outside influence, and is no longer growing at a fast enough rate to pay for improvements and expansion. Levels of advertising have effectively been frozen, and combined with competition for advertising revenue from private broadcasters, advertising income for the public service stations may actually fall in future years. Attempts by the public broadcasters to avoid existing rules on advertising by exploiting merchandising, sponsorship, and product placement are hindered by legal barriers, and even if they are allowed to continue, it is unlikely that they will ever be more than a useful, but minor source of additional income.

Given the limitations of traditional methods of funding, it is useful to examine whether there are any other alternatives. Those that spring to mind include subscription or pay television, co-production finance, and the possibility of introducing separate sources of funding for the private and public broadcasting systems.

Pay or subscription television allows the viewer to pay directly for the reception of a TV channel or individual programmes (usually called pay-per-view). This is common in the United States, where the widespread use of cable television has enabled electronically metered systems of direct payment (see Hollins, 1984, pp.177pp). The most famous pay-TV channel in the United States is Home Box Office (HBO), a subscription feature-film service, but subscription has also been used for arts, pornography and sports channels. In Europe, the most successful pay service is the French feature film channel, Canal Plus. This is delivered terrestrially, but access is controlled by a decoding

system. Subscription already forms the financial basis of several European satellite-delivered feature-film services, notably Sky Movies in the United Kingdom, Filmnet in Scandanavia and the Benelux countries, and more recently the West German version of Teleclub, owned by the Taurus Group. Apart from the advantage of charging consumers directly for the reception of TV programmes, something which is not possible in advertising or licence-fee funded systems, pay-TV is also seen as a useful way of avoiding intrusive advertising. This is one of the main reasons behind its phenomenal growth in the United States. In the United Kingdom, subscription finance is currently being envisaged as a means of funding the BBC in place of the licence fee.

Co-productions are also becoming an important source of funding for feature-film and television projects, helping to spread financial risk, particularly of expensive drama productions (see Ungureit, 1987, p.53). Some distinction should be made between co-productions and co-funding. Co-funding, as the name infers, relates to a financial contribution towards production costs. In return the co-funder receives a share of income from sales, and the right to transmit the programme. Pre-buying, a form of co-funding, entails putting money "up front" in return for acquisition rights. Co-production proper involves cooperation in production at the level of management, facilities, and funding. Co-production does, however, have some negative consequences. Primary amongst these is the threat to national identity and culture, because international co-productions tend to appeal to a homogenised international audience (see Maier,

1986, p.50; see also Ungureit, 1987, p.53). Co-productions also carry a stronger risk of editorial interference. At an economic level, they carry the disadvantage of dilution of rights (see Maier, 1986, p.49).

At ZDF, co-productions accounted for 1.6% of all transmissions in 1987 (ZDF Jahrbuch, 1987, p.144). Most of these were international co-productions involving other European broadcasting stations, including East European broadcasters (Ungureit, 1986, pp.54-55). One of the most interesting projects has been the formation of a co-production consortium involving European public broadcasters, ORF, SRG, RAI, Antenne 2, Channel 4, and the Spanish broadcaster, RTVE, for the production of European series (see Ungureit, 1987, p.60). This was established in 1985 with a fund of DM156m in order to promote European drama and make European broadcasters less dependent on the international (mainly US dominated) programme market (see Ungureit, 1987, p.60). Each station donates programmes to the consortium. One, the *Eurocops* series, has already been completed and was shown in November 1988. In 1987, other income, of which co-production finance is only a small part together with programme sales and income from merchandising, accounted for only 1.4% (DM22.4m) of ZDF's total income of DM1,573m (ZDF Jahrbuch, 1988, p.205).

At ARD, a distinction is made between *Ko-Produktion* and *Ko-Eigenproduktion* (ARD Jahrbuch, 1988, p.351). The former refers to programmes whose funding and/or production is undertaken both by an ARD station and by another partner. The latter refers to programmes whose production is undertaken almost exclusively by the ARD station,

with co-funding by an external partner. In 1987, *Ko-Produktionen* accounted for 5.9% of all transmissions on the ARD television network, with *Ko-Eigenproduktionen* accounting for a further 2.9% (excluding repeats) (ARD Jahrbuch, 1988, p.353). ARD income from co-production and co-funding amounted to DM49.5m in 1987, less than one per cent of ARD's total income (DM5141m) in 1987 (ARD Jahrbuch, 1988, p.308).

Although co-productions are growing as a source of programming on ARD and ZDF (see Maier, 1986, p.50), they are really only suited to certain types of programmes, predominantly drama and sometimes documentaries. This is primarily because of the logistics of co-production, involving different partners often with different objectives. The financial benefits, although useful for the production of top quality drama, are minimal compared to income from the licence fee and advertising. It is therefore unlikely that co-production finance will ever be more than a peripheral source of income.

The principle of separate sources of funding has its origins in the United Kingdom. The idea behind this is that no broadcasting organisation should be forced to compete for its funding with an organisation of the same stature. For example, the BBC is funded by the licence fee, the ITV network is funded by the sale of advertising space, and Channel 4 is funded by a subscription from the ITV contractors, who in turn are permitted to sell Channel 4's advertising space. The advantage of such a system is that broadcasters are partially freed from having to worry about their source of funding and can concentrate on the provision of programmes. If they were to

compete for the same source of funding, it is commonly believed, that they would then attempt to show similar types of programming in order to maximise their audiences and as a result, their advertising revenue (see Broadcasting Research Unit, 1985, pp.15-18). Although this system has its supporters in the United Kingdom, it is slowly being dismantled by the emergence of new broadcasting channels, and by government attempts to deregulate the broadcasting market.

Some of these alternative methods of funding, especially pay television and separate sources of funding, have been promoted within West Germany, with the Monopoly Commission (Monopolkommission) playing a leading role in the debate. The Commission, whose members are drawn from academe, business, and the trade union movement, is appointed by central government, and reports every two years on monopolistic tendencies in the West German economy (see Kiefer, 1981a, p.821; Kammann, 1986, p.7). In 1981, it published a special report on the competitive implications arising from the introduction of private broadcasting. The report was a response to the Constitutional Court's 1981 ruling, which had relaxed constitutional requirements on private broadcasting (Monopolkommission, 1981; see also Kiefer, 1981a, pp.821pp).

The Monopoly Commission rejected advertising as a source of funding for private television, because of the possible negative influence which advertisers might exert over the process of opinion formation (Monopolkommission, 1981, pp.21-24). Instead it recommended pay television, adding that pay television gave programmes a real

economic value by promoting direct transactions with the viewer, thus countering the idea that advertising-funded broadcasting is basically free (1981, p.22). Those programmes which were most popular would then be offered at a correspondingly low cost (1981, pp.22-23). The Commission felt that pay television would benefit minority interests, provided that viewers were willing to pay extra for their viewing preferences (1981, p.23). Advertising-funded broadcasting, on the other hand, was felt to be more likely to encourage ratings battles and uniformity in programming content, because of pressures to maximise audiences in order to maximise advertising revenue (1981, p.23). The Commission added that minorities would probably be ignored under such a system, because they are too small to attract advertising revenue (1981, p.23).

The Commission also rejected advertising as a source of funding for private broadcasting on competitive grounds (1981, p.24). It was felt that advertising was not sufficiently informative to allow consumers a rational choice from a range of goods and services, and that its suggestive character is essentially manipulative (1981, p.25). This tended to favour large firms with large advertising budgets rather than new market entrants or smaller companies (1981, p.26). For this reason, the Commission stated a preference for limits on advertising or even its possible removal from the public service stations (1981, p.26).

The Commission's proposals on pay television were too radical to gain support amongst broadcasters and politicians, and it drew mixed



reactions (see Kiefer, 1981a, pp.821pp). For one thing, in 1981 cable television, which would have allowed the introduction of pay television on a wide scale, was virtually non-existent in West Germany, and is still not available to even half of all West German households in 1988. Doubts were raised about the ability of pay television to raise levels of diversity in programming content, and the United States was used as an example of pay television being used to promote populist programming, chiefly feature films (see Kiefer, 1981a, pp.823pp). It was also argued that a system of private television financed solely by subscription would promote populist programming, leaving less profitable areas like educational, informational, and minority programmes to the public service broadcasters, who in turn would be forced to become "niche" channels (see Kiefer, 1981a, pp.823-824). The argument that pay television would benefit minorities has a basic flaw which is even implied by the Commission's findings. Only those minorities of taste which are prepared to pay for their programme preferences would be given more choice. Those minorities which are socially disadvantaged would be financially precluded from greater choice, and perhaps forced to become increasingly reliant on a poorer quality public service broadcasting system. The arguments in favour of pay television would also appear to contradict Constitutional Court rulings about not leaving the regulation of broadcasting solely to the market or in this case consumer choice. Broadcasters play an essential role in the formation of opinion for the benefit of all, not just those who are prepared to pay for this privilege (see Kiefer, 1981a, p.822).

Given the fact that subscription-funded channels are more likely to rely on popular programmes like feature films and light entertainment, pay television might encourage programme inflation which would price the public stations out of the market altogether (see Kiefer, 1981a, p.824). The viewer would then be forced either to do without these programmes or to pay extra for programmes which had previously been generally available (Kiefer, 1981a, p.824). The Commission's proposals also have to be criticised for ignoring the competitive realities of a broadcasting environment which is no longer restricted to national markets. If West Germany were to ban advertising on its private television channels, there is nothing to stop foreign channels beaming into West Germany via satellite (or even terrestrially) and soaking up domestic advertising budgets.

In its sixth and latest report, the Commission recommended that separate sources of finance be introduced for private and public television with ARD and ZDF supported by the licence fee, and private broadcasting by advertising (Monopolkommission, 1987; *Monopolkommission: Rundfunkanstalten sollen auf Werbung verzichten*, KuR 26.7.1986, p.9; *Monopolkommission empfiehlt werbefreien öffentlich-rechtlichen Rundfunk*, FK 1.8.1986, p.14). This, it was believed, would encourage a complementary rather than a competitive relationship between private and public broadcasters, because they would then be competing in the provision of programmes, rather than for advertising revenue (see Monopolkommission, 1987, p.126). The Commission only saw a competitive market for advertising not for programmes, because there was no direct financial relationship between programme providers and

consumers (Monopolkommission, 1987, p.125). It argued that if public service broadcasting was free of advertising it would then be better able to fulfil its "kulturpolitischer Auftrag" without having to worry about commercial interests (Monopolkommission, 1987, p.126). If, however, ARD and ZDF were forced to compete with the private stations for advertising revenue, the Commission feared that both might be forced to neglect their public service obligations to satisfy commercial criteria.

The Commission's arguments for the removal of advertising from ARD and ZDF were remarkably similar to those advanced in the United Kingdom for the separation of funding sources, and most recently endorsed by the government-appointed Peacock Committee which rejected advertising on the BBC for reasons of programme diversity. The Monopoly Commission's recommendation constituted a radical change from its earlier report of 1981. In this report, the Commission had only rejected advertising on private broadcasting, recommending subscription instead as a way of securing programme diversity. The Commission had now dropped its earlier proposal in order to reflect the realities of a system of private broadcasting, which is largely funded by advertising revenues and the economic unlikelihood of pay television being introduced (Monopolkommission, 1987, p.126). The Commission stated that it would have still preferred a total ban on advertising, because it resulted in less programme diversity, but it felt that it was unlikely that advertising would ever be dropped.

Like the 1981 report, the Monopoly Commission's sixth report met with a certain amount of criticism - much of it justified (see Kammann, 1986; Weder, 1986). Uwe Kammann recognises some of the advantages of separate sources of funding, and he uses the United Kingdom as an example, but he feels that the Commission capitulated to existing developments (1986, p.7). Separate sources of funding can act as a barrier to undue influence by advertisers, because audience maximisation is not the principle aim, as is the case at Channel 4 (Kammann, 1986, p.8). However, it is doubtful whether the British model could be successfully imported into West Germany, because the tradition of mixed funding for public service broadcasting is too deeply entrenched (see Kammann, 1986, p.8).

If advertising were removed from ARD and ZDF it would certainly render them more vulnerable to the political machinations which surround the procedure for fixing the licence fee (Kammann, 1986, pp.7-8; Weder, 1986, pp.645-646). At present advertising still gives ARD and ZDF a degree of financial flexibility and independence, unlike in the United Kingdom, where recent debates about licence-fee funding have underlined the vulnerability of the BBC to government pressure (see Hearst, 1986, pp.567-581; Kammann, 1986, p.8). It is also doubtful whether the public would accept a substantial licence-fee increase, estimated by some to be 40%, which would follow the removal of advertising from the public channels (see Kammann, 1986, p.8; Weder, 1986, p.645). Furthermore, without advertising, public service broadcasting might suffer from appearing to be an expensive elitist "niche" compared to "free" private broadcasting.

The removal of advertising from ARD and ZDF is also unlikely to find favour with advertisers. First, the private channels, dependent as they are on satellite, cable, and an incomplete regional network of terrestrial frequencies, do not enjoy the same reach as ARD and ZDF (see Kammann, 1986, p.8). Second, competition for advertising budgets would be reduced, probably resulting in more expensive advertising rates.

In some ways the Commission appears to have treated ARD and ZDF as a safety net for the deficiencies of private broadcasting, because of the non-commercial character of their funding. Dietrich-Jörn Weder doubts whether the removal of advertising from ARD and ZDF would secure programme quality and diversity as the Commission had claimed (1986, p.646). If ARD and ZDF were solely dependent on the licence fee their programme policies would become more subject to party-political and governmental scrutiny (see Weder, p.646). Reliance on the licence fee would also restrict involvement in cable or satellite television (Weder, 1986, p.646). The Commission's statement about there only being a competitive market for advertising, not programming is rejected by Weder because ARD and ZDF are already losing staff to the private stations, and the cost of acquiring programmes is going up as a result of competition (1986, p.646).

A modification on the separate sources of funding theme has been the idea of privatising ZDF, making ARD solely reliant on licence-fee revenues in order to establish "wirklich ein System von öffentlich-rechtlichen und privaten Anbietern. . . das ein Optimum an Meinungs-

und Informationsfreiheit gewährleistet und das den ständigen Wettbewerb um das beste Programm garantiert" (*Burda-Geschäftsführer Todenhöfer für Trennung beim Rundfunksystem*, KuR 25.7.1989, pp.8-9). This proposal was underlined with reference to the success of Channel 4, a "Kulturkanal" which in "Europa seinesgleichen such" (pp.8-9). It would also have allowed a reduction in the licence fee (p.8). This proposal is not new, because it was also championed, unsuccessfully, by West German press interests in 1964 (see Gottberg, 1979, p.303). Apart from the objections of both ARD and ZDF to this idea, constitutionally, it is unlikely to happen, because the obligation of *Grundversorgung* is inextricably connected to licence-fee funding (see Kiefer, 1986, p.693; *ZDF und ARD zum Burda-Geschäftsführer: "Sommerloch" und "Unkenntnis"*, KuR 25.7.1987, p.9). The removal of advertising from ARD and ZDF would undoubtedly further the cause of the private stations. It might even reinforce the public service principles of ARD and ZDF, but at the risk of becoming a niche in the broadcasting environment, and more subject to political interference.

In summary, we can conclude that in spite of its undoubted defects, the old system of mixed finance for ARD and ZDF, supplemented by peripheral commercial activities like merchandising, product placement, and sponsorship, is likely to continue for the foreseeable future. This has been reinforced by the passage of the 1987 inter-Land agreement on the reorganisation of broadcasting, which reaffirms the licence fee as the main source of public service broadcasting's finance, and virtually freezes advertising as a supplementary source of income. Slower growth in licence fee revenues, restrictions on advertising,

party-political interference in the way the licence fee is set, and the new factor of competition from commercial broadcasters, means that funding will continue to be the Achilles' heel of West Germany's public service broadcasting stations, inhibiting their plans for both programme reforms and expansion.

## CHAPTER SEVEN

### CONCLUSION

After almost forty years the public service monopoly in West Germany has been breached with the introduction of private broadcasting channels. Commercial broadcasting is now a permanent feature in most West European countries, and the proliferation of new channels is forcing a reappraisal of both broadcasting policy and the role of the older broadcasting institutions, most of which have followed the public service tradition.

In West Germany, as in many other West European countries, the motives behind the opening of the broadcasting market to commercial players are partly economic, but also political. The introduction of new broadcasting services is seen as a means of boosting local industries involved in consumer and industrial electronics. Commercial broadcasting also offers a means of retaining domestic advertising budgets in an increasingly international media environment. Politically, competitive commercial broadcasting is viewed as one way of weakening public service broadcasting's hold over public opinion by giving the public a choice of broadcasting outlets. This potent combination of political and economic logic has proved to be a force which few public service broadcasters in Western Europe can withstand.



In West Germany, the history of attempts to break the public service monopoly is almost as long as the existence of the Federal Republic of Germany itself. Private broadcasting was never prohibited, but technological restraints (lack of frequencies) and constitutional rulings on the independence of broadcasting and on the fulfilment of the same programming obligations as those applied to public service broadcasting, proved too high a barrier for commercial broadcasting initiatives. The technological problem was partly resolved with central government's decision in 1982 to promote and install cable and satellite technology. The passage of legislation by the *Länder* allowing private broadcasting and a lessening of constitutional demands on private broadcasting, starting with the Constitutional Court's decision in 1981, finally produced the right conditions for the introduction of commercial broadcasting in 1984.

Commercial television and radio represent a radical departure from the tightly regulated broadcasting environment of the past. The implications of competition for ARD and ZDF are far-reaching as they begin to come to terms with a smaller share of the audience and with a rate of change occurring faster than at any previous stage in West Germany's broadcasting history. My research has outlined the initial effects of commercial broadcasting on public service broadcasting. It has also attempted to ascertain the extent to which ARD and ZDF can stand up to commercial competition by drawing on their own resources, and the extent to which their response is governed by factors outside their immediate control.

The prospect and eventual introduction of private broadcasting has inevitably led to a review of programming policy at ARD and ZDF in order to meet the commercial challenge. Private TV channels SAT 1 and RTL Plus are already beginning to make inroads into ARD and ZDF's audience share in cabled households. If terrestrial frequencies become more widely available, ARD and ZDF will have to endure dents in their national audience share too. This seems likely, because private broadcasters have fewer programming obligations than either ARD or ZDF, and can concentrate their efforts on reaching a mass audience with popular programming. In cabled homes, research has shown that it is ARD and ZDF's serious peaktime information programmes which suffer from this competition. A loss of audience share for ARD and ZDF is therefore inevitable, but whether this becomes a rout or a sustainable loss depends very much on the type of programming policy adopted now.

In contemplating changes in programme policy, ARD and ZDF have had to weigh up several factors. Above all they need to convince their political paymasters that they deserve a decent licence fee increase, and the extent to which they manage this is governed by their ability to offer the right sort of programming. This is not easy because it involves a balancing out of the society-led goals of public service and the commercially-led goals of mass audience satisfaction. If ARD and ZDF diverge too far from their public service obligations and adopt an overtly commercial approach in their programming policies, they run the risk of losing legitimacy for the licence fee. For in November 1986, the Constitutional Court justified licence-fee support

for ARD and ZDF, precisely because they provide programming (minority and cultural programmes) which commercial broadcasters are unwilling or unable to provide. For this reason ratings should not become the sole criterion of success for public service broadcasting. Alternatively, however, if ARD and ZDF fail to attract a significant proportion of the audience with popular programming, they still run the risk of losing political support for a suitable licence-fee increase.

The most visible forms of programme policy reform, not surprisingly, have been felt in television. Emphasis has been placed on maintaining and developing an identity which makes public service broadcasting stand out from its competitors, while still appealing to all sections of the community. The chief elements of this identity are seen to lie in the maintenance of domestic production, high quality news, information and current affairs, and live programming such as sport and cultural events. In this sense, ARD and ZDF have an advantage over private broadcasters, because licence-fee funding allows them to support those types of programming which cannot always be supported in an advertising-funded environment. Both ARD and ZDF have declared that they are not tampering with the proportion of transmission time devoted to information and entertainment, but they are certainly devoting more attention to scheduling, placing more populist forms of programming, particularly domestic drama series, at peaktime. For example, at ARD regional information programmes have been placed on the third channels to make way for popular drama and entertainment on the mainstream service.

However, within ARD and ZDF, there are certainly differences about this policy. Two strands of thought seem to be emerging within the public stations. The old school, which fostered the news- and- documentary approach to public service broadcasting, is coming into conflict with those who feel that the past approach was elitist and might prove to be the rock on which the system perishes. The new school views the introduction of commercial television as a challenge to be met by good, popular indigenous programming rather than as something which has to be strangled because of its commercialism. A retreat to the role of a niche broadcasting system, catering solely for those sections of the audience not adequately catered for in the commercial system, is rejected. However, even here there seems to be an element of elitism which patronises the audience by ignoring the fact that "highbrow" programmes can be popular. This seems particularly evident in the ascendancy of the populist series over the one-off play on both national TV channels.

In spite of changes which are undoubtedly taking place, there are still problem areas in programming supply. ARD and ZDF may well be priced out of two of their most popular schedule components, feature films and sport. Commercial competition has already led to inflation in the market for programme rights, and ARD and ZDF's attempts to mop up the market for feature films not only brings bad publicity, but involves money which could perhaps be better spent on domestic production. Popular sports, such as football and tennis, continue to be a rights battleground, and here ARD and ZDF may well have to come to terms with paying more for less coverage. Information programmes,

while still an important anchor in the schedules, have in the past frequently been sullied by rumours of political interference. Now, with the exception of news, they are most at risk of losing their audiences to more popular alternatives offered by the commercial channels. ARD and ZDF's genuine commitment to their public service obligations may well be tested by their steadfastness in keeping this type of programme in prime-time slots. If ARD and ZDF were prepared to cooperate in preparing schedules which benefited the public service system as a whole, the commercial challenge could be better met. However, their own rivalry, as exemplified by recent squabbles about the coordination of schedules, the use of ARD's third channels as a scheduling weapon, and outright competition at those times when both are permitted to transmit advertising, all seem to indicate that this level of cooperation has not yet been adequately contemplated.

Beyond mainstream television, ARD and ZDF's policy of expansion into new areas of activity - satellite broadcasting, sub-regional broadcasting, breakfast TV - is not without flaws. On a practical level, there is a danger that both organisations may be spreading their already diminishing resources too thinly on ventures which will never earn them revenue. New ventures also encourage accusations of empire-building. However, ARD's insistence on being allowed to continue with its satellite channel, Eins Plus, and SDR and SWF's legal battle with Baden-Württemberg for the right of public service broadcasters to embark on sub-regional radio, also constituted the defence of the broadcasting stations' right to determine their own policies independently of government. If ARD and ZDF can demonstrate

that they are not just offering more of the same, these ventures may be justifiable, particularly where they meet recognisable audience needs which are not adequately catered for by either the public or the private system. The cultural emphasis of 3SAT and Eins Plus and the regional/local emphasis of sub-regional radio and the Dortmund cable pilot project certainly fulfil this objective.

Even though ARD and ZDF are making strenuous efforts to meet the challenge posed by private broadcasting, their destiny is undoubtedly determined by other factors over which they have only limited influence. The structure of West German broadcasting is greatly influenced by federalism and by the determination of media policy by the *Länder*. This was amply demonstrated in the complicated, drawn out, and controversial negotiations over the inter-*Land* agreement on the reorganisation of broadcasting. Compromise was notoriously difficult to achieve because the *Länder* are split between two ideologically opposed camps: the CDU/CSU, the traditional supporters of commercial broadcasting, and the SPD, the traditional supporters of public service broadcasting. Throughout the three-year negotiations, concluded only in March 1987, threats of separate *Länder* initiatives on satellite broadcasting and the licence fee undermined the security of ARD and ZDF, and at times threatened to lead to the disintegration of the whole federal system of broadcasting. In fact, the threat of separate *Land* initiatives on satellite broadcasting was only prevented by the intervention of the Constitutional Court in November 1986, which reaffirmed the principle of cordial behaviour between individual

*Länder*, and the necessity of unanimous agreement on satellite broadcasting, which affects all *Länder*.

Closely allied to the complexities of *Länder* policy-making, the funding of public service broadcasting represents the weakest component in ARD and ZDF's defences. For any reforms of TV programming policy or expansion into new areas of activity require a secure and growing source of revenue. The procedure for fixing the licence fee, which is decided by a unanimous decision of the *Länder*, remains deeply politicised, and the situation is unlikely to improve in spite of assurances in the 1987 inter-*Land* agreement that the level of the licence fee would be determined objectively, taking ARD and ZDF's financial requirements adequately into account. Moreover, as most homes now have a TV or radio set, licence-fee revenues cannot be expected to increase as much as they did in the past. The inadequacy of licence-fee funding is likely to grow as commercial broadcasters begin to compete for programming and staff, driving costs up still further, but they, unlike ARD and ZDF, are not saddled with the high costs of domestic production, and minority and cultural programming which are part of ARD and ZDF's constitutionally defined programme obligations of *Grundversorgung*.

Advertising revenue, an important supplement to the licence fee, particularly for ZDF, is unlikely to grow significantly because of the freeze on advertising levels imposed by the 1987 inter-*Land* agreement and because of increasing competition from commercial broadcasters, who are subject to less stringent advertising regulations. As a

result of competition, ARD and ZDF may well have to price their advertising slots more competitively. If they suffer any substantial decrease in advertising revenues, the independence which advertising offered as a remedy to the politicisation of the licence fee may diminish. As ARD and ZDF begin to compete with commercial stations for the attention of advertisers, their programming may also suffer.

There are only a few sources of new, alternative funding for public service broadcasting, and these are unlikely ever fully to replace the mixed method of advertising and licence-fee finance. There are also strong doubts about the legality of sponsorship, product placement, and merchandising at ARD and ZDF and about their compatibility with the public service ethos. Indexation of the licence fee would undoubtedly remove the issue of funding from the political arena, but is unlikely to be introduced in the foreseeable future, because politicians are fully aware of the political leverage which the present licence-fee procedure gives them. Similar barriers face subscription finance, which the public would no doubt resent if subscription (following the eventual removal of advertising from ARD and ZDF) proved more expensive than the present licence fee.

Throughout, the Constitutional Court has proved to be the saviour of public service broadcasting, reinforcing the principles of diversity, pluralism, independence, and equality of access, and acknowledging broadcasting's important role in shaping and informing public opinion. The Court has not ignored the changes taking place in broadcasting, and has adapted its interpretation of the Basic Law



accordingly, but it has always maintained that the core of basic rights and broadcasting independence are more important than any commercial considerations or the interests of the state.

The Court's chief concession to public service broadcasting has been to acknowledge the deficiencies of commercial broadcasting, which make it unable to meet fully broadcasting's classical role of informing and shaping public opinion. In doing so the Court has recognised public service broadcasting's traditional role in providing balanced programming, not just minority programming, and in contributing to the formation of public opinion, by giving it the duty of *Grundversorgung*. This has been backed up by an obligation placed on the legislator to guarantee ARD and ZDF sufficient financial, technical, and organisational resources to meet the requirements of *Grundversorgung*. However, within such a dual system of private and public broadcasting, private broadcasters have been given fewer obligations on broadcasting balanced programming in recognition of the fact that their commercial structure makes it more difficult for them to provide programmes which do not attract the type of audiences that underpins funding by advertising. In the interest of safeguarding the process of public opinion formation, the Court has also guaranteed ARD and ZDF's participation in those broadcasting areas which cannot be considered part of *Grundversorgung*, such as sub-regional broadcasting. The Court has further safeguarded these activities by requiring that the legislator secure some means of funding these activities, even if advertising funding is prohibited.

In theory the Court's pronouncements in 1986 and 1987 have greatly enhanced the position of public service broadcasting by rejecting protected areas of activity for private broadcasters and underlining public service broadcasting's special role of *Grundversorgung*. However, the reality is far more complex. In spite of *Grundversorgung* and ARD and ZDF's theoretical access to all areas of broadcasting, there is no guarantee that they will be awarded sufficient funding to finance all their programming aspirations, let alone their basic services. For the dual system put forward by the Constitutional Court will only work if the party-political players remain committed to supporting the maintenance of a public service broadcasting system. The advance of commercial broadcasting and a succession of low licence fee increases may well lead to the gradual impoverishment of the public system to a point where it is no longer even protected by the Constitutional Court. For the Court's rulings are not hewn in tablets of stone. The Court's composition changes, and future members may well interpret the Basic Law in a way more conducive to private broadcasting. It should be remembered that public service broadcasting, *per se*, has no constitutionally guaranteed status in the Basic Law.

The clearest lesson which emerges from recent developments in West Germany, is that no matter how sophisticated the checks and balances in the formal structure of broadcasting, a lack of political consensus about the role of broadcasting can undermine broadcasting structures, making them more open to political pressure and the threat of gradual decline (it could be argued that this political consensus has been

missing from the very beginning, because public service broadcasting is still regarded by many as a relic of the Allied occupation). The continuing and worsening problems of public service broadcasting's funding demonstrate conclusively the inadequacy of formal constitutional and organisational structures, and the introduction of commercial broadcasting can only aggravate the situation. The Constitutional Court's pronouncements and the stipulations of the inter-Land agreement on the reorganisation of broadcasting offer only a partial resolution of this problem.

In the meantime, ARD and ZDF must demonstrate that they are not only able to equal the achievements of private broadcasting in the sphere of popular programming, but also capable of providing their public with some added value which commercial broadcasting cannot or is unwilling to provide. This will not be easy, because there is a strong argument against the continuation of a service which caters for all audience needs, particularly if the audience fragments and ARD and ZDF have to compete with many other alternative offerings. However, even if ARD and ZDF have to admit that they will not become involved in all new areas of broadcasting, there is still a strong argument for a well-balanced mainstream service. For if ARD and ZDF can maintain and increase the loyalty of their public, this surely constitutes their best guarantee of survival and the best way of convincing their political paymasters that they need financial support. The added value which would help to underpin this loyalty would certainly include continued involvement in domestic production, information, and cultural and minority programming. Yet the real key to success, in my

opinion, is improved high quality entertainment and drama, which appeals to the vast majority of the potential audience.

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- Mr. Walter Konrad, *Koordinator*, 3SAT, Mainz, 24th August 1987.
- Mr. Bernd-Peter Arnold, *Regionalisierungsbeauftragter* and deputy *Chefredakteur*, Hessischer Rundfunk (HR), Frankfurt-am-Main, 26th August 1987.

## 5 Abbreviations

AG	Aktiengesellschaft
ARD	Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland
Art.	Artikel
BBC	British Broadcasting Corporation
Bd.	Band
BDZV	Bundesverband der Deutschen Zeitungsverleger
BR	Bayerischer Rundfunk
BT	Bundestag
BVG	Bundesverfassungsgericht
CLT	Compagnie Luxembourgeoise de Télédiffusion
DBS	Direct Broadcast Satellite
DAG	Deutsche Angestelltengewerkschaft
DFG	Deutschland-Fernsehen GmbH
DGB	Deutscher Gewerkschaftsbund
DLF	Deutschlandfunk
DRADAG	Drahtloser Dienst AG
DW	Deutsche Welle

FAZ	Frankfurter Allgemeine Zeitung
FPG	Freies Fernsehen GmbH
FK	FUNK-Korrespondenz
FKD	FUNK-Korrespondenz Dokumentation
FR	Frankfurter Rundschau
FRAG	Freie Rundfunk AG
GG	Grundgesetz
GmbH	Gesellschaft mit beschränkter Haftung
Hg.	Herausgeber
HR	Hessischer Rundfunk
IBA	Independent Broadcasting Authority
ITV	Independent Television
KEF	Kommission zur Ermittlung des Finanzbedarfs der Rundfunkanstalten
KtK	Kommission für den Ausbau des technischen Kommunikationssystems
KuR	Kirche und Rundfunk
MP	Media Perspektiven
MPD	Media Perspektiven Dokumentation
NDR	Norddeutscher Rundfunk
NWDR	Nordwestdeutscher Rundfunk
PRIBAG	Private Bayerische Rundfunk AG
RB	Radio Bremen
RFFU	Rundfunk-Fernseh-Film Union
RIAS	Rundfunk im amerikanischen Sektor
RRG	Reichsrundfunkgesellschaft
RTL	Radio-Télé Luxembourg

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ARD Jahrbuch 1970-1988

Cable & Satellite Europe

Contemporary German Studies

European Journal of Communication

epd/Kirche und Rundfunk

Frankfurter Rundschau

FUNK-Korrespondenz

The Historical Journal of Film, Radio and Television

Hörzu

Journalist

Kabel & Satellit  
Media, Culture and Society  
Media Perspektiven  
Media Perspektiven Dokumentation  
Medium  
Neue Medien Newsletter  
Neue Medien  
New Media Markets  
Publizistik  
Rundfunk und Fernsehen  
SAT 1 News  
Screen  
Der Spiegel  
Studies of Broadcasting  
Süddeutsche Zeitung  
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#### 4 Interviews

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- Ms. Andrea Kreuzinger, *Assessorin*, Landeszentrale für private Rundfunkveranstalter, Rheinland-Pfalz, Ludwigshafen, 30th July 1987.



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RuF	Rundfunk und Fernsehen
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SDZ	Süddeutscher Zeitung
SFB	Sender Freies Berlin
SR	Saarländischer Rundfunk
SWF	Südwestfunk
TV	Television
UHF	Ultra high frequency
VHF	Very high frequency
WDR	Westdeutscher Rundfunk
ZDF	Zweites Deutsches Fernsehen